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1942 SABOTEURS CASE

VOL.

XVII OF

XVIII

TRANSCRIPT

STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS
Before the
MILITARY COMMISSION TO TRY PERSONS CHARGED WITH
OFFENSES AGAINST THE LAW OF WAR AND THE
ARTICLES OF WAR.

Washington, D. C.

Friday, July 31, 1942.

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VOL. XVII

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Washington, D. C.

Friday, July 31, 1942.

The Military Commission appointed by the President by order dated July 2, 1942, met, in room 5235 Department of Justice, at 10 o'clock a.m., to try for offenses against the Law of War and Articles of War, the following persons: Ernest Peter Burger, George John Dasch, Herbert Haupt, Heinrich Harm Heinck, Edward John Kerling, Hermann Neubauer, Richard Quirin and Werner Thiel.

PRESENT: Members of the Military Commission, as follows:

Major General Frank R. McCoy, President,
Major General Walter S. Grant,
Major General Blanton Winship,
Major General Lorenzo D. Gasser,
Brigadier General Guy V. Henry,
Brigadier General John T. Lewis,
Brigadier General John T. Kennedy.

As Trial Judge Advocates:

Honorable Francis Biddle, Attorney General of
the United States.
Major General Myron Cramer, The Judge Advocate
General, U. S. Army.

Colonel F. Granville Munson,
Colonel John M. Weir,
Colonel Erwin M. Treusch,
Major William T. Thurman,
Officers of the Judge Advocate General's
Department.

Oscar Cox, Assistant Solicitor General of
the United States.

As Provost Marshal:

Brigadier General Albert L. Cox.

As Counsel for the Accused except George John Dasch:

Colonel Cassius M. Dowell,
Colonel Kenneth Royall,
Major Lauson H. Stone,
Captain William G. Hummel.

As Counsel for the Accused George John Dasch:

Colonel Carl L. Ristine.

- - -

PROCEEDINGS

The President. The session is open.

Colonel Munson. The full personnel of the Commission is present. The eight defendants are present. The staff of the prosecution is present, with the exception of Mr. Rowe. The staff of the defense is present except Captain Bruton.

Your name is Private Nathan Melnick?

Private Melnick. Yes, sir.

Colonel Munson. Hold up your right hand, please. You solemnly swear that you will not divulge the proceedings taken in the trial to anyone outside the courtroom until released from your obligation by proper authority or required so to do by proper authority, so help you God?

Private Melnick. I do.

Colonel Munson. May the record show that, although adjournment was taken on Monday, July 27, 1942, to Thursday, July 30, 1942, at 10 o'clock a.m., the Commission, with the consent of both prosecution and defense, adjourned the hearing further, after the adjournment of July 27, 1942, to Friday, July 31, 1942, at 10 o'clock a.m., in order that counsel might participate in the hearing on petition for writ of habeas corpus held in the Supreme Court of the United States on

Wednesday, July 29, and Thursday, July 30, 1942? May the record so show?

The President. It may.

Colonel Munson. That is satisfactory to the defense, is it not?

Colonel Royall. Yes, it is.

The President. The Judge Advocate General.

OPENING ARGUMENT ON BEHALF OF THE PROSECUTION
by
THE JUDGE ADVOCATE GENERAL

The Judge Advocate General. Members of the Commission: This has been a most unusual case. In the first place, it is unusual because this is the first time a military commission has met in seventy-seven years. It is unusual, too, in the fact that there are eight defendants in one trial, which is very unusual in a military tribunal. It is unusual again because of the fact that the bulk of the prosecution evidence has been composed of statements made by these eight defendants. It is still more unusual because of the fact that, for the first time in my knowledge, at least, every one of the eight defendants has claimed that he did not intend to do this, and while admitting that he did all these things, they came through simply to get out of Germany. In other words, they claim that instead of being invaders, they are refugees.

I will make it unusual in one other sense--they my opening statement will be very brief.

The facts that the prosecution have brought forward show that these various defendants, born in Germany, came to the United States, and, under various circumstances, at different

times, went back to Germany.

We have shown that after they had been there, some for some time, others for a short time, they went to this school for sabotage, under Lieutenant Kappe, at Quentz. We have shown that that school is run by the German Government, the German Reich. We have shown that while at that school they were taught sabotage and taught how to use these various bits of dynamite and other articles that they brought over here. They were shown how to write secret handwriting and they were given some addresses in Lisbon for the purpose of communication.

The prosecution has shown that they came over here in two submarines, through a theater of operations, through the Atlantic Ocean, which we all know at the present time is a theater of operations at sea, where ships are being sunk, frequently, 5 and 10 miles off the shores of the United States. They came in submarines, one of which was seen and fired upon. They were sighted at least by airplanes on the way over. One of them attempted to chase a ship, but lost it on the way over.

They came and landed at night, in the darkness of night, on our shores at Long Island and Florida, through our naval sea defenses. They came through our own defense lines, where we had patrols and troops of varying quantities, and near installations, and landed at Long Island and Florida, where they buried their ammunition and where they then went to pursue their various ways until they should get together again for the purposes for which they came over.

We have shown that in that school they were taught the

various places that should be particularly taken care of and sabotaged, like bridges and aluminum plants, and how to get at them.

We have shown that since they have been here they have had communication between themselves, in aid of this whole conspiracy.

We have brought charges, first, under the law of war, in two specifications, one of which is coming through our lines, and I forget to say, in stating the facts, that they came through our lines and landed in German marine uniforms, for the particular purpose, as stated in the testimony, so that if they were captured they could be treated as prisoners of war. They came through our lines at a time when, if it had happened that there had been a stronger force there, their submarine could have been attacked and shot down, and they could have been attacked and shot down as an invading force.

Under the first charge, therefore, we have laid two specifications, one for coming through the lines in that way, and the second for appearing behind the lines for the purposes which I have related.

We have laid two charges under the Articles of War, one under the 81st Article and one under the 82nd Article.

We have laid another charge, a charge of conspiracy of all these men, these eight defendants, to do these things.

The prosecution submits upon that evidence that we have made out a case for which we ask on each of these charges and specifications a finding of guilt and a sentence in these cases of death.

The President. Are there any other remarks at present

from the prosecution?

The Judge Advocate General. Not for the present.

The President. You are ready to have the defense say a word?

The Attorney General. Yes.

ARGUMENT ON BEHALF OF THE DEFENSE
by
COLONEL KENNETH ROYALL

Colonel Royall. May it please the Commission, the function of an opening statement--and, of course, the method of making that statement is entirely a matter of choice for the prosecuting officer, and what I say is in no sense a criticism--is to cover fully in the argument the contentions which are to be made by the prosecution. I assume that procedure will be followed in this case. It is not permissible, under any procedure I know, to retain the right to make the principal contentions until after the defense has spoken. If that is done, and I do not assume it will be done in this case, of course we would have an opportunity to reply to that; and I say that merely in order that the Commission may know that in case there is an extended argument, broader in scope than that which the Judge Advocate General has now presented, we may wish an opportunity to argue again in reply thereto.

The counsel who represent seven defendants have a rather unusual situation presented to them. It is our duty under the law to give the contentions as to each of our clients. The circumstances presented in these cases are in some instances radically different. Therefore, it must be our effort, and will be our effort, to state the propositions as fairly for all of

the defendants as we are capable of doing, realizing that in some instances what is said in favor of one may not be favorable to another or may be positively unfavorable.

When that situation arises all we can do is to leave it to the good judgment of the Commission, in which we have implicit confidence, to decide which of the two is the more probable or reasonable contention; and we cannot be in the position of arraying one of our clients against the other. It is not my intent to do that, and I shall seek to avoid it to the extent that it is necessary.

Now, we have presented here a case which is going to require two species of arguments for our defendants. In the first instance, we have got to discuss those elements which are common to all of them. I do not think that that discussion would really be necessary, certainly as to the defendant Burger, because, as we contended at the close of the evidence, and as we will contend here with all the sincerity of which we are capable, his case seems to us certainly to stand alone and requires separate and different consideration, and to some extent that is also true of the defendant Haupt.

As to the other defendants, there are varying steps of circumstances which we will call to your attention, but our first argument will be an argument that would in a sense apply to all eight of the defendants, unless there were some distinguishing features, which, of course, there are.

We also had the problem of dividing this matter up between Colonel Ristine, representing Dasch, and ourselves. With the permission of the Commission, the following course will be adopted. I will first address the Commission, as I say, on

those facts which are common to the whole case, and will then deal specifically with the facts as to five of the defendants, which will be dealt with in this order: Kerling, Heinck, Quirin, Neubauer, and Thiel. I would like to state those over again: Kerling, Heinck, Quirin, Neubauer, and Thiel.

When that has been concluded, Colonel Ristine will address the Commission on behalf of the defendant Dasch.

Thereafter I will address the Commission on behalf of Haupt, and finally Burger.

Now, may it please the Commission this is a case of great moment from many standpoints. It is, of course, of great moment to the defendants themselves, because they are charged with offenses as to which the penalty might be death or long imprisonment. The matter is one for the determination of this Commission. No other tribunal can possibly determine the facts, the weight to be given the testimony, except this Commission. So long as this Commission is acting validly--and that is the situation in the absence of some specific rule to the contrary--upon this Commission, and upon this Commission alone, rests the right and the responsibility of determining what facts the evidence prove in this case.

I would be avoiding something that is known to everybody if I did not refer to the proceedings before the Supreme Court, to this extent. I know it is unnecessary to say this to the Commission, but I would like to have it in the record. That proceeding did not, and could not, ask that Court to pass upon the weight of the evidence or the facts to be found from the evidence. That question can never be raised on a writ of habeas corpus. Only the jurisdictional fact and only the facts

so far as they do concern jurisdiction were or could be considered by that Court; and even then that Court could not pass upon the weight or credibility of the evidence or the deductions and inferences to be drawn therefrom. Therefore, nothing in the proceedings before the Supreme Court, no matter what their decision might be, in any way infringes upon the right of this Commission to find the facts and determine the facts, if you are held to be a lawful Commission, and we must certainly for the present, and possibly permanently, consider that you are a lawful Commission.

I say this further for the record, as I have said before. The challenge to the jurisdiction of this Commission was in no sense a challenge to its personnel or in no sense implied any doubt as to their ability or wisdom or fairness.

As evidence of that, we told you about it before we started the hearing. We have sought at all times to be entirely frank with this Commission on that feature of the case, and we know that you will give this case just as fair consideration as if that feature of the case had not been challenged. That constitutes statutory features which, in the interest of democratic government, should have been presented to a tribunal; and it is interesting and gratifying to us to note that that seems to be the general opinion--that it should have been passed on, in preservation of our system of government. Whatever the opinion might be--and most of it, of course, is hostile to interfering with this Commission--the opinion seems to be uniform that it is a matter that should have been resorted to.

There is another thing that I desire to say in connection

with this case. The Court-Martial Manual provides, as you
all know, without my saying so, that in order to convict an
accused of an offense, the court must be satisfied beyond a
reasonable doubt that the accused is guilty. It goes on to
say that a reasonable doubt is not a fanciful doubt. I do not
remember the exact wording of the manual on that, but you, of
course, have the manual and can refer to it. After consider-
ing all the evidence, if you in your mind feel that there is
some question as to the guilt of these people, that question
being based on a reasonable view of the evidence, then the
accused should be acquitted on that charge.

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There is nothing in the President's order or in the rulings of this Commission which alters that in any degree and, therefore, certainly in the case of some of the defendants and, as to others, in the case of some of the charges, we think that will clearly be applicable, and an acquittal of a few of the defendants should be had on all charges and as to others there should be an acquittal on some charges.

Since we will not have a separate opportunity to present to the Commission the question of punishment, I would like to say this on that point, when you reach that, if you do, as to some of the defendants. Of course as to such defendants as may be convicted of spying, in the military sense--and we are going to talk a good deal about that, because that is a very critical matter, we think--the death sentence is mandatory.

We do not believe, under this testimony and in view of the decisions of the courts, that there is any possibility that the offense of spying has been proved in this case; that is, in a military sense, as distinguished from espionage. Therefore on the other charges the matter of punishment is discretionary with the Commission. On the matter of punishment the Commission, of course, may take into consideration any facts which appear of record, that is, specific facts--you are confined on that question to the facts appearing in the record--and every court on the question of punishment must take into consideration general matters of policy, not in the sense of politics, not in the sense of any particular object to be sought, but in the sense that human knowledge of affairs in general must be considered; and therefore we would be blind if we did not realize that on the question of

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punishment national defense is an element that must be considered. Of course that is true, and we realize that the Commission must consider it. However, that has more features than one.

These are eight Germans, two of them being American citizens originally, and one of them certainly being an American citizen, who have come over here allegedly to commit acts of sabotage, except those as to whom it was clearly proven there was no intent; and we will discuss that matter. But, taking it in the view most favorable to the prosecution, they went to a sabotage school and came over here for that purpose.

The very excellent preventive work which has been done by the Federal Bureau of Investigation and the other facilities makes it improbable, if not impossible, for any similar plan to succeed in the future. Therefore it is not necessary to punish these men as a preventive measure for any probable repetition of this offense.

That is not the only feature of it which, on the question of punishment, is entitled to consideration. I say there will not be any more chance of this in America, but it is common knowledge, from the newspapers, that maybe we will be moving somewhere into the zone of military operations on some other continent, and the chances are that American soldiers will have to face this situation much more frequently than will the enemy agents.

This case will to some extent establish perhaps a criterion for dealing with men who commit these acts. I do not know of any situation up to this time where Americans have had to do so or have sought to do so. We have not gotten

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along that far in our plans. But we do know that Englishmen have done so; and it was true in the last war, as all of you know better than I do, that the Germans, in their treatment of Englishmen, adopted a much higher standard and a fairer standard than they did as to any other nation. There may be something in the Teutonic origin of the race; I do not know. It may be an inherent feeling of similarity in our heredity. The same thing was true of their treatment of Americans; and history and common knowledge show today that the matters with which Germany is charged, that is, atrocities, do not concern the English people nor the English-speaking people, but concern the Slav races largely and, to a lesser extent, the Latin races of occupied France.

There is in the record, uncontradicted and without objection from the prosecution, this testimony of Kerling. If it was not true it could have been proven untrue and, with all the facilities that the prosecution has, it would have been proven untrue if it were not correct. If it were not competent it would have been objected to. It appears in the record unchallenged, and I will read it verbatim (reading):

"Q Did you know of any similar mission that the English had had into Germany or Occupied France?

"A That is nothing unusual. It happens every day.

"Q Both in uniform and in civilian clothes?

"A Mostly in civilian clothes. Just those border raids they are in uniform, but they pick them up every day in Germany.

"Q Did you know the penalty that was inflicted upon Englishmen not in uniform who were apprehended in this mission in Germany?

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"A Yes.

"Q What was done with them?

"A After the war with France was over I was out in France. If they caught an Englishman in uniform in a French family, they took the French family and punished them, mostly by death, for hiding them, and put the Englishman in a concentration camp in a German fortress. The latest I know one case, a German plane landed in Germany on a road near--it was north of Berlin somewhere, on one of these new roads. They landed three of them there, and they were taken away and put in a fortress. They landed in civilian clothes.

"Q The English landed in civilian clothes?

"A Yes. It happens over there every day."

Now, may it please the Commission, that is unchallenged; and if it were not true, in the hysteria of war in England we would hear that it was not true. I think it is legitimate for this Commission to take it into account, when we will probably send ten boys on similar missions for every one that Germany has or can send, realizing the fact that the decision in this case may establish a criterion which will be applicable, ten to one, to our own boys who are going overseas. That is a legitimate consideration in this matter. It is a matter of common knowledge and, as far as that testimony is concerned, it stands unchallenged.

We believe that these men have done nothing, if we take every word and every inference of the prosecution's contentions to be correct, that warrants the infliction of the death penalty. They did not hurt anybody. They did not blow

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up anything. They did not affect the conduct of the war, except by the fact that they came over here and enabled us to take preventive measures which will help our conduct of the war. But if it be said that their intentions were bad, according to the prosecution, the law has always drawn a distinction between what a man intends to do and what he does. Those of us who appear in civil courts see every day the charge of assault with intent to kill. It happens down in my country, where a certain part of our population is a little more criminal-minded than the other part, and it is not infrequent that our courts are filled on a Monday morning with cases involving assault with intent to kill; frequently secret assaults, way-laying. If any of you have been around army camps in Southern localities--I reckon it is true everywhere, but I speak of the South because I know it--you know that that is true. Here is a man whose case has every element, except accomplishment, much more than these men have here, because they had not gotten far enough along to start the accomplishment. Here is a man who shoots another, and if his marksmanship had been good he would have been electrocuted. That is the only difference between his offense and that of the man who is sent to the gas chamber or is electrocuted, because the first man missed his aim. He generally gets about 18 months or two years, sometimes three or four years.

The law has drawn that distinction for hundreds of years. That is an attempt. As a matter of fact, these men have not gone anywhere near that far. To make the cases analogous you would have to say that a man bought a pistol with intent to kill. He would be fined \$50 in most jurisdictions. The element of criminality is there in that case, but the law makes a

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distinction, and it makes it for two reasons: in the first place, the law considers not merely the intent of a man, but the result and the accomplishment, in determining what the sentence will be. And that is written into every law, in the Manual for Courts-Martial and in the criminal statutes of every state and of the United States.

In the second place, the law recognizes, in the case of the man who just bought a pistol intending to commit murder, that it takes a great deal more of a criminal heart to actually start the perpetration of an offense than it does to prepare for the perpetration of it.

I do not suppose that any member of this Commission or any member of counsel on either side has ever really wished that somebody was dead. But there are people who have done that, and if they had the opportunity, possibly, in the heat of anger, they might do something about killing him. It is terribly wrong to feel that way about anybody. But 99 out of 100 of those people, when confronted with the actual commission of an offense, would never commit it, because it takes much more hardness, much more criminality, much more depravity, to actually do something of that kind than it takes to plan to do it or prepare to do it.

Let us apply that to this case. Let us apply those doctrines that are so well established in the English Law and in the European Law and in every law that I know of, that it is unnecessary to cite authority.

What did these men do? Let us take the prosecution's case to the limit.

Let us assume, which we can, certainly, in the case of Burger, that they came over here intending to commit sabotage.

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Suppose they had reached the point in their hearts where they thought that was the thing to do. They did not do it. Whether you believe what they told you in its entirety or not--I know you are not going to believe everything they told you; I am not foolish about that, as to what some of them told you--there at least is a question in the mind of everybody whether a considerable part of these men ever had the criminality or the depravity to have actually blown up anything. If you assume they did have it, the fact is that they did not do it; and that is the consideration that the law takes into account.

If this were peace time and a man had gotten explosives to blow up Madison Square Garden when it was full of people and it could be proved conclusively that he had bought them for that purpose and had hidden them for that purpose, unless there were a wave of popular indignation I cannot conceive of any court giving him over two or three years, if that is as far as he had proceeded with his plan. Maybe a court would give him five years, but I doubt it. I do not think any court that I know of would give him over two years, if that were a fact.

If a man had just assembled the equipment to blow up a railroad bridge and had not done anything but bought the explosives and buried them miles away from where he was going to commit the offense, a court would not give him anywhere near that long a term.

Let us get the proper perspective on this case. These men may have planned something, but they have not done any terrible thing. They prepared to do some things which, if accomplished, might have been terrible. But they have not done it.

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Let us not let the fact of war absolutely change the character of what they have done. Give it weight, yes; but do not let it destroy our entire perspective of just exactly what has happened. They have done nothing to hurt America, to hurt it in the defense in this war. They may have intended to do it, but they have done nothing that has affected our war effort. As a matter of fact, unwittingly, in the case of those who did intend it, they have probably rendered a real service--unwittingly, I say--to the war effort, by giving us a means of prevention.

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May it please the Commission, those remarks are general, of course, as is perfectly apparent. I want to say just two more things about the matter of punishment. I was asking Major Stone, who had looked up the statutes, in order to be certain, so that I would not make any misstatement about the statutes.

There is a criminal statute about committing sabotage which was enacted by Congress, and while if these men have committed a war offense that statute, if they think that statute is not binding upon this Commission, and I do not want to leave any inference that it is, it ought to be right persuasive as to what the common attitude of the people of America is as to how the gravity of this offense should be considered. It was enacted by Congress with the war fully in view. It prescribes the penalties that would be imposed in these acts. It imposed the maximum penalties in time of peace, and then it imposed the maximum penalties in time of war. That is the maximum. That was done after careful consideration.

I do not think I am assuming anything when I say it must have been done after full consultation with the military department of our Government. I am confident that Congress did not enact it otherwise. I think it is a matter of public record that nobody connected with the military establishment, as far as I have been able to ascertain, asked them to go any further than that in the matter of penalty. It was considered by the authorities, civil and military, and it was prescribed that when a man in time of war actually committed sabotage and blew up a plant, the maximum penalty would be 30 years--the maximum; the most you could give him. These men have not done anywhere

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near that much--not anywhere near that much. Yet Congress, with certainly the tacit approval of the War Department and the military authorities, has recently said that that is as much as they ought to get for actual sabotage. I speak of sabotage, and I say that these men have not even attempted to commit sabotage, because an attempt is distinguished from preparation. It is very seriously doubtful that they have gone far enough to constitute an attempt.

Buying a gun to shoot somebody is not an attempt. It is a violation of law, but it is not an attempt to commit murder. Obtaining a gun from somebody else and burying it in the sand or putting it in your house with intent to murder somebody is not an attempt to commit murder.

These men did not go even to the extent of an attempt. If it had been an attempt, there is no rule better established than that attempt always has a lighter punishment than the actual commission of the offense. When Congress has said that it thinks 30 years is the most anybody ought to get, under the most aggravated circumstances, for actually committing sabotage, certainly nobody ever intended, and the military has never suggested, as far as I know, that they ought to get any more severe penalty than that under any other circumstances, and certainly it was understood that they would get a lesser one for an attempt.

The President. Are you going to make a reference to that particular law?

Colonel Royall. Yes, sir, we can give you that. I am going to talk about espionage later, so I shall give you both citations. There is also a civil statute on espionage which

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is different from military spying. The statute on sabotage-- I think this is correct; Major Stone has gone for the book-- is 50 U. S. Code Chapter 6, Sections 101 to 105. With the permission of the Commission, we shall hand you a copy of the federal statutes with the place marked in them on the espionage and sabotage statutes. Major Stone has gone to get that, sir.

The President. Thank you very much.

Colonel Royall. I want to make it clear that I am not arguing, and I do not want to argue, anything which is not legally sound because, in the first place, I would not intend to do so; and in the second place, it would be useless, with eminent counsel on the other side.

I am not contending, of course, that the civil statute binds you, but I am contending that on the matter of punishment it is legitimate, fair, and, I think, ought to be binding from a moral and practical standpoint of consideration, because of the fact that with the approval, tacit or otherwise, of the military it was recently made a law by Congress.

I think on that question and on the other question, without making the eagle scream, or seeking to do so, we have got to realize that this decision here today, in addition to the effect it may have on our soldiers, is a very important one for America. We are fighting this war to preserve our own system of government. The distinction between the American system of government and any other system of government--the English, of course, being practically the same--is that we provide an orderly procedure, whether it be military or whether it be civil, and that we administer that procedure with equity and justice in times of stress as well as in times of peace

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and quiet.

In other words, we have not a fair-weather government. We have a government that is not just, as we would call it down in North Carolina, a government in Sunday-go-to-meeting clothes. It is supposed to wear a garb that can be worn all the time, under all circumstances and in all cases, giving weight to the considerations, but still preserving our administration of justice on an even keel.

We want to win this war, and we are going to win it, but we do not want to win it by throwing away everything we are fighting for, because we will have a mighty empty victory if we destroy the genuineness and the truth of democratic government and fair administration of law. That applies all the way through this, and it is mighty hard. You know, the real test of a system of government is not when the sun is shining but is when the weather is stormy. Anybody can administer justice when the sun is shining, things are peaceful, and there is no stress or excitement. It takes a man to administer our system of government when that is not the case.

May it please the Commission, I spoke about the spy charge, and throughout this trial I have tried to get Colonel Dowell to take a more active part in the presentation than he has done. He is a man of wonderful ability but extreme modesty, and he has insisted that I, because my job was a little more that of a practicing lawyer than of a soldier, should take the major part of the courtroom work. Whatever I have been able to do has been very largely due to the sound advice and splendid counsel and level head that he has got.

This is a matter connected with military spying in a zone

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of operations. If I went into it with the thoroughness with which it ought to be discussed, I would be giving you second-hand information that he gave me. So, under those circumstances, with the approval of the Commission, I should like to ask Colonel Dowell to present his views to you at this time on that particular feature of the matter. He has finally agreed to do so.

The President. We shall be glad to hear him.

ARGUMENT ON BEHALF OF THE DEFENSE
by
COLONEL CASSIUS M. DOWELL

Colonel Dowell. May it please the Commission: In this connection, as Colonel Royall has stated, we are not assuming in any degree that the Commission has not heard the complete evidence and is not competent to pass upon it, but we desire to place certain things in the record, for the purpose of the record, for the benefit of those who may see it at any stage of review, as well as to point out these facts at this time, because we conceive it to be a part of our duty to our defendants, in carrying out the oath that we have taken to defend them with all honorable and legitimate means possible.

I invite attention especially to Charge III and to the fact that it charges spying, in the early language, to this extent:

"In that, during the month of June 1942, the" defendants

"being enemies of the United States and acting for and on behalf of the German Reich, a belligerent enemy nation, were, in time of war, found lurking or acting as spies in or about the fortifications,

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posts and encampments of the armies of the United States and elsewhere * * *."

Up to there, there has been a specification alleging that these men were lurking or acting as spies. It is utterly incomplete as a specification up to that stage, because it involves an examination into the definition of "spies." We do not know what it means until we find out what "spies" are. It says "lurking or acting as spies."

I shall begin by admitting as a fact that in the appendix to the Manual for Courts-Martial that is exactly the form of specification that is laid down for guidance. It simply charges an individual with spying.

On the other hand, however, I challenge this form that appears in one of the appendices of the Manual for Courts-Martial and in Charge III of this case as not meeting the requirements of a valid and proper specification, and I invite the attention of the Commission to paragraph 29 of the Manual for Courts-Martial, on page 18, which contains this language with reference to the requirements of a specification. It states that it must be:

"A statement in simple and concise language of the facts constituting the offense."

Stating that a man is a spy is not stating a fact; that has to be inquired into, to find out what it means. Continuing to quote:

"The facts so stated and those reasonably implied therefrom should include all the elements of the offense sought to be charged."

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I invite particular attention to the expression there that the specification of the charge must state the facts, which include all the elements--a simple statement of facts, not a conclusion of law. So, we are by that language driven to examine what the elements of spying are. What are all the elements? In that connection, we have the discussion on page 157 of the Manual for Courts-Martial, which appears under the heading "Eighty-Second Article Of War. Being A Spy."

I take it that we do not need any further indication that this language applies to the military commission than the fact that it is related to the Eighty-Second Article of War, in which both the court-martial and the military commission are mentioned as punishing agencies. Either one mentioned in the Eighty-Second Article of War should go to this regulation written in aid or execution of a statute, which is a matter of elementary and fundamental law, as appears from the statute itself. No exceptions can be made to it, not even by the man who authorized it or promulgated it. He may change it, perhaps, but so long as it is in force, it has the same force and effect as the law itself.

Here is a regulation written in aid or execution of the Eighty-Second Article of War. That must be given the same force as a statute itself, which purports to explain to those people mentioned, to those agencies mentioned in the Eighty-Second Article of War, what the term "spy" means, because the Eighty-Second Article mentions these two agencies, remember, court-martial and military commission, and it is absolutely inconsistent with any principle that I know of that, having mentioned the two in the same article, the court-martial would

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have to come here to find what the elements are but the military commission might go elsewhere and consider that that did not apply to them.

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This is the 82nd Article of War, and this is all it pertains to. The elements of proof are set forth. All the elements of the offense of spying are set forth, for the information and guidance, I take it, of whatever military tribunal may be trying a man under the 82nd Article of War. Those elements are clearly stated there.

They are: (a) That the accused was found at a certain place within our zone of operations, acting clandestinely, or under false pretenses. That is the first. (b), and this is the one to which I invite special attention, that he was obtaining, or endeavoring to obtain, information with intent to communicate the same to the enemy.

It says "that he was obtaining,"--not getting ready to obtain--or "endeavoring to obtain," and "endeavoring" is defined as a serious attempt. It is not only an attempt; it is a serious attempt.

He must be either obtaining information to send back or attempting to obtain it, neither of which appears to have been charged in Charge III.

Let us look at the remainder of the charge. Let us see if the remainder of that language contains any charge that these men were obtaining information or attempting to obtain it.

"Were, in time of war, found lurking or acting as spies in or about the fortifications, posts, and encampments of the armies of the United States and elsewhere."

I read on from there:

"And secretly and covertly passed through the military and naval lines and defenses of the United States, along the Atlantic Coast, and went about, through and behind said lines

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and defenses and about the fortifications, posts, and encampments of the armies of the United States, in zones of military operations and elsewhere, disguised in civilian clothes and under false names, for the purpose of committing sabotage and other hostile acts against the United States, and for the purpose of communicating intelligence relating to such sabotage and other hostile acts to each other, to the German Reich, and to other enemies of the United States, during the course of such activities and thereafter."

There is not one word stating that they were obtaining information or attempting to obtain or endeavoring to obtain.

The definition of "spies" we find in the Rules of Land Warfare, published on October 1, 1940, by order of the Secretary of War, for the information and guidance of all concerned, and published for the military service. That is published for all military persons, for their information and guidance. It merely recites the definition given in The Hague Conference of 1917, and reads as follows:

"A person can only be considered a spy when, acting clandestinely or on false pretenses, he obtains or endeavors to obtain"--get the wording--"obtains or endeavors to obtain information in the zone of operations of a belligerent with the intention of communicating it to the hostile party."

There are two important things there, whether they were obtaining information or attempting to obtain it, or endeavoring to obtain it--"endeavor" is a serious attempt--in the zone of operations.

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On the matter of what constitutes an attempt, we cite again page 190 of the Manual for Courts-Martial, under the heading "attempts," in which it states that:

"Soliciting another to commit a crime is not an attempt; nor is mere preparation to do a criminal act."

The illustration given here is that of a man buying matches to set a haystack on fire, which does not constitute an attempt. It is mere preparation. It has to be more than that. If he sets a fire to the haystack and it is put out in any way, then that is more than an attempt. But merely the buying of the matches is not an attempt.

We turn from that with the statement that we believe that the specification is entirely insufficient, in that there is no charge of spying.

There is no statement of facts which sets forth the essential elements of the offense, obtaining or endeavoring to obtain information to send back to the enemy. The intent is unimportant provided there is no obtaining of information or attempting to obtain it. To show the intent, without showing the attempt or without showing the actual obtaining of the information, does not constitute the offense. The intent is immaterial. Also, the acts, unless the ^{intent} attempt can be shown, would be immaterial.

However, that is not the case. It takes both of them. It takes the intent, plus the obtaining or endeavoring to obtain information, and it must be material information. It must be of a military nature. It is not necessary to go into that. If it is immaterial, it would not constitute the act of spying at all.

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The other element, whether or not these acts were committed within a theater of operations, becomes important in the event, and only in the event, that the Commission is not convinced that there was no attempt or no obtaining of information with the intent of sending it back to the enemy.

What I shall discuss about the theater of operations has nothing to do with that at all except that, in any event, regardless of whether espionage or spying was committed, if it was not committed in the theater of operations the offense of spying is not triable by this tribunal; and that, of course, brings up the question of what a theater of operations is.

I think it appears in evidence that the Field Service Manual, FM 100-5, in definitions 2 and 4, makes it very clear that the theater of war, or the whole area, if you want to put it that way, is divided primarily into two zones: The zone of the interior, which is the back or the interior of the country, more or less unaffected or disaffected by the flagrant or active military operations, and the zone of operations. There are only two.

The zone of operations is nearer the fighting front, and it is divided into other zones, such as the zone of communications, combat zones, and so forth, as you go up toward the front.

I do not think that these statutes or the Articles of War or any of this discussion of the theater of operations were ever intended to have that technical military hard and fast rule of thumb at all. I think, whether there is fighting or whether there are military activities that amount to fighting or operations in the usual sense, it can happen right in

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Chicago right now. The only point I make is that the fact that some of these men went up to Chicago and were found there did not make Chicago a theater of operations. It has to be something more than that.

Between Chicago and the front, where the actual fighting is going on, if they passed through the whole thing, somewhere they must have passed out of the theater of operations, within the reasonable interpretation of that term. Otherwise, the whole country is a theater of operations, within the meaning of this statute, and I hardly think that that view is tenable at all, because we find in the Rules of Land Warfare, at the bottom of page 59, this statement, speaking of the 81st Article of War:

"Although the 81st Article of War, as an enactment of the Congress, technically applies of its own force only within territory of the United States and to persons subject to American military law elsewhere, it substantially embodies principles of the unwritten laws of war applicable to occupied enemy territory"--which this is not--and will be enforced by American troops occupying such territory."

Again, quoting from subparagraph (b) of 205, on the subject of treason:

" * * * will be held to authorize the trial of civilians by military tribunals, only when the offense has been committed within territory under martial law or military government," neither of which this is.

Military government is occupied enemy territory governed

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for the time being by the military. Martial law, of course, exists in an area where civil courts have been scattered and are unable to carry on, and somebody has to take care of the situation in the meantime, until they can be reconstituted and carry on again, and the military logically is the one to carry that on. It is no law at all; it is merely the will of the commander, saving a situation that needs to be saved.

It mentions martial law and military government, and here is another:

"Or within the zone of military operations, or within a military reservation, post, or camp, or in a place otherwise especially subject to military jurisdiction."

It becomes very important, therefore, as, of course, the Commission already realizes fully, to determine whether this was in fact part of the zone of military operations.

The fact that on March 18, 1942, our War Department issued an order changing the name from the Eastern Theater of Operations to the Eastern Defense Command has been explained by the colonel from the Operations Division of the War Department, General Staff, who was placed on the stand. He admitted that the reason it was changed was that the functions in that area were not such--he particularly mentioned supplies and training functions--to justify its being termed a part of the theater of operations.

I do not attach too great an importance to that, because any point within the zone of the interior may become a theater of operations. But has it become so? Has the fact that

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there is fighting out beyond, in the theater of operations, made the zone of the interior a theater of operations? If so, what is the fighting, what are the operations that have been going on there to make it a theater of operations?

That is very important to determine, as pointed out by Attorney General Gregory in the opinion of 1918, part of the language of which appears on page 361, Volume 31, of the Opinions of Attorneys General. I quote this language:

"In this country, military tribunals, whether courts-martial or military commissions, cannot constitutionally be granted jurisdiction to try persons charged with acts or offenses committed outside of the field of military operations--"

Now, you gentlemen have fully realized that from the beginning. It makes it very important to determine whether this was in fact a part of the theater of military operations. Remember, the civil courts were functioning. They were able to and capable of trying these offenses, except spying. Spying is not triable by civil courts. There are two statutes enacted by Congress that bear upon the offense. One is Revised Statute 1343, in which Congress has enacted a statute almost verbatim from the 82nd Article of War, but punishable not by a civil court, but punishable by court-martial and military commission.

The punishment in that statute is death, mandatory, the same as court-martial Article 82.

They have enacted another statute with reference to espionage. A lot of people think they are the same thing.

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They are not the same thing. The maximum there in war time, I believe, is thirty years.

Colonel Royall. Unless there is direct communication to the enemy actually made, which is shown by the proof.

Colonel Dowell. Thank you, Colonel Royall.

However, Congress has enacted two statutes. Now, why? The espionage statute makes a different punishment for the act in time of war and the act in time of peace. Where is that statute going to apply if you say the entire country is the theater of operations? That statute would find no application anywhere, and we would have only 1343 or the 82nd Article of War. So it becomes very important to determine as a reasonable matter what is meant by the zone of operations.

Continuing now immediately after the language I have quoted from the Attorney General's opinion, ending with, "military tribunals, whether courts-martial or military commissions, cannot constitutionally be granted jurisdiction to try persons charged with acts or offenses committed outside of the field of military operations":

"or territory under martial law or other peculiarly military territory, except members of the military or naval forces or those immediately attached to the forces such as camp followers. Were this not the correct conclusion, then any person accused of espionage, for instance, wherever apprehended and wherever the act charged may have been committed, would immediately become subject to the jurisdiction of a military court, and all the above-cited provisions of the Constitution would be rendered nugatory in the cases of the most

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grave class of crimes, generally carrying the death penalty. Any other conclusion would be tantamount to applying martial law, where no justification for martial law exists and none had been declared, and would be a suspension of the Constitution during war times."

Of course, it is not necessary to go further into the question of the words "or elsewhere" used in the statute. "Or elsewhere" would not change The Hague tribunal rule which has been published for our guidance. It would not change that, because it has to be within the theater of military operations. That would not take care of punishing your own people who, under the 82nd Article of War, are chargeable with offenses. You can punish your own people for acts anywhere. It does not make any difference whether it is in the theater of operations or in the zone of the interior. That language has been held to be introduced to cover that situation. Otherwise you could not try your own people for those offenses.

That is all I have to present on those two points.

The President. May I ask, Colonel Dowell, in reference to your quoting the Rules of Land Warfare, 1940, I think--

Colonel Dowell. 1940, yes.

The President. You read what sounded to me like the time-honored description. Does it differ in any sense from the Instructions For The Government Of Armies Of The United States In The Field, by Francis Lieber?

Colonel Dowell. Without having it before me, my belief is that it does not, sir.

The President. In other words, there is no change, due to

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the changed conditions of modern times, in the language covering that military offense?

Colonel Dowell. I believe not. I think it is essentially the same.

I will make this point, without having it before me: that if there are any differences, I would, of course, insist that the Rules of Land Warfare of 1940--that is, the Hague Rule of 1917--should apply to this case.

The Judge Advocate General. I may state that that is a verbatim quotation.

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The President. Before Colonel Dowell takes his seat, does any member of the Commission care to interpose any questions on this matter of technical definition?

Were you, Colonel Dowell, or other defense counsel, to continue on the differences which you have mentioned initially between spying as a military offense and espionage as a civil offense, as covered by the statutes? Were you going to make the distinction any plainer, or was it going to be covered by your colleague?

Colonel Dowell. I take it that Colonel Royall will speak upon that more fully and will cite the espionage statutes. I merely wished to point out that Congress has enacted two statutes, one on spying and the other on espionage, and that the espionage statute provides for punishment as between peace time and war time, and the maximum in war time is thirty years, I think, unless it is done in direct communication with the enemy.

Congress must have enacted two statutes for reasons; and I think it is a principle of enactment that the courts will not construe a statute out of existence if there is any reasonable way to give it force and effect. The fact that Congress has enacted legislation on espionage in time of peace and espionage in time of war must mean that the statute applies somewhere, and of course it applies outside of the field, we claim, of military operations, as reasonably construed, not according to the definition in Field Service Regulations, mind you. Your own soldiers and sailors and camp followers, and so on, may be tried anywhere by a military court, but not others.

The President. Mr. Attorney General, I understand that

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there is an agreement that counsel would like to have a recess at 11:45?

Colonel Royall. (After conferring with the Attorney General) I would think, Mr. President, by 11:35 or 11:40.

The President. Then we will proceed until that time.

ARGUMENT ON BEHALF OF THE DEFENSE
by

COLONEL KENNETH C. ROYALL--Resumed

Colonel Royall. I think I might probably finish my statement.

May it please the Commission, we have here the United States Code dealing with espionage and sabotage. It has just occurred to me that it might be a little more convenient for the Commission if we had copies made, because it is scattered through here, apparently, and when we come back after lunch, if the stenographers have had time, we will have copies of this statute for each member of the Commission.

The President. The Commission would appreciate it.

Colonel Royall. Answering the question which was just asked Colonel Dowell as to the difference between spying and espionage, the terms are used loosely as being the same thing. As a matter of fact, I think you can pick up the ordinary dictionary which contains definitions based on popular usage, and you will find that one will refer to the other. But, as Colonel Dowell has so well stated, Congress has drawn the distinction, itself, between spying and espionage by enacting two different statutes. The Espionage statute was enacted during the last war to cover situations which were not within the definition of military spying. I think that was amended in 1940 and brought up apparently to meet modern conditions.

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The only way to determine the difference in meaning between them is to compare the statutes, taking, first, the old spying statute, Section 1343, which is now Article 82, and taking the definition carried in the Manual for Courts-Martial and in the Rules of Land Warfare as to what it means, on the one hand, and comparing them with the statute on the other hand.

The reason that is the only method of approaching it is that naturally the contrast has not been drawn, because no court, as far as we know, has had occasion to draw it since the espionage statute was enacted. But it is perfectly clear that the spy statute covered espionage in two particulars. In the first particular the Act must be committed in a zone of military operations. That is one distinction. The second one is that it must be information of a military nature, a direct military nature, that is sought and communicated, not of an indirect military nature.

Espionage, to give you an illustration, would be giving information to the enemy as to the manufacturing capacity of a plant, the amount of labor available in the plant, the amount of transportation facilities available in a plant which was manufacturing munitions.

The military offense of Spying would be obtaining information more directly connected with military operations, as to the disposition of troops about to go into combat. It might even extend to the number of troops in an encampment. I do not know just where the line would be drawn, but it would have to be something directly connected with a military operation, and not information which would apply in a general

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sense. That is apparent from reading the statute on Espionage.

Without burdening the Commission by reading something which they will have in their possession, in defining Espionage I will read you this much of it:

"Whoever, for the purpose of obtaining information respecting the national defense, with intent or reason to believe that the information to be obtained is to be used to the injury of the United States or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dock, yard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless or signal station, building, office, or other place connected with the national defense."

You notice that it does not say anything about troops or troop movements; just the physical facilities.

It does not mean, and I think it has been so construed, that when you say "vessel" it is a vessel actually engaged in combat operations, but if it is something that is a physical facility not engaged in military operations. Otherwise the statute does not have any meaning at all. Apparently a camp unless it is in the zone of military operations or in connection with military operation, would come under the definition of espionage.

That statute was enacted in 1940 after the European War was over. It prescribes a maximum of thirty years, and that is the maximum in all of these espionage statutes. I do not remember whether this particular section carries that much,

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but, anyway, that is the maximum.

It is a question, then, as to whether there is proof of military spying as defined by Section 1345; and, as Colonel Dowell has said, not only does it lack the distinguishing features between espionage and spying, but it lacks one thing that has to be proved in either case, and that is an endeavor to obtain information. There has got to be an endeavor to obtain information. The word "endeavor" means a serious attempt. That is the definition of "endeavor"; and "attempt" means an effort to act to obtain information.

The charge in this case does not even charge an endeavor. Let us say that maybe the specification could be amended. Possibly it could. But the facts do not show it. The evidence is perfectly clear. Colonel Dowell has covered it, I think, but there was one thing which he did not mention, and that is that the men were not armed. Neither was the Coast Guardman armed. There was no military operation there. There does not purport to be any military operation.

But, leaving that, there is no evidence in this case of any intent or endeavor to obtain military information.

Every one of the defendants gave a written statement, separated and not knowing what the others were giving. They were all individually asked separately about what they were instructed in the school to do, without having the benefit of knowing what the others were going to say. In addition to that, they were all cross-examined on that feature, every one of them, as I recall it, by the Attorney General, and without exception they agreed on this, and they did not take merely the favorable facts: they all said they had instruction in

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writing in secret ink. If their purpose was just to tell a blanket lie about it, they would not have told that. They all said they had instructions in writing in secret ink, and every one of them, without knowing what the others said, also said that the only purpose of it was to communicate with each other as to where they would be, so that they could meet.

There is no evidence to the contrary, and no one can fairly say that that is communicating military information to the enemy or intending to communicate it.

Two of the defendants--and I do not want to talk about your defendant, Colonel Ristine--said they had handkerchiefs containing Lisbon addresses. As to the ones who had handkerchiefs with the Lisbon addresses, let us be fair. They did intend, possibly, to communicate to Lisbon and thence to Germany. We have got to admit that. But the evidence shows that none of the others knew a thing about those handkerchiefs or had any information or knowledge about them of any kind. So, as to the other six, they did not even know that any kind of information was ever to be communicated to Germany; and even the two that had the Lisbon addresses testified, and the others corroborated them, that they had no instructions in communicating with the enemy and testified that there was no instructions to them to communicate any military information to Germany, even in the case of those two.

Another material circumstance is that at first they apparently intended that these men should be instructed in communications and they started giving some of them radio instruction, but they canceled it and did not continue giving it to them, and they were told that another branch of the

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German army was handling the spying features and they were not to have anything to do with it. They all say that, independently, without knowing what the others are going to say.

If they had made up a lie about it they could have said that they did not know anything about secret writing. The F.B.I. did not know anything about secret writing except what they told them. But all of them told that exactly alike. That is one thing in which they were alike.

There is one other thing that I would like to say about it, and then I think it would be a good time to close.

Even if they had methods and means of communicating, and even if it be conceded, which it cannot be, because there is no evidence of it, that they were going to communicate some information of a military nature, there is not one syllable of evidence in this case that they endeavored to obtain information. And yet the Manual for Courts-Martial, the Rules of Land Warfare, and the text-books--and I think Winthrop is included; I think I am right about that, Colonel Dowell--all say that there has got to be an endeavor to obtain military information. But there is not one syllable from any witness that shows any endeavor to obtain any information of any kind for the purpose of communicating it to Germany.

I think, under those circumstances, that no matter what you do about the other charges, if this evidence is to be believed and be given every possible inference, they have not proved any offense of military spying.

The President. Do I understand that you think that we can meet again at 2 o'clock?

Colonel Royall. We might be able to meet at 1:30.

The Attorney General. The Court meets at 12, and I

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think we can safely say 1:30.

The President. Very well. We will recess until 1:30.

(Whereupon, at 11:40 o'clock a. m., a recess was taken until 1:30 o'clock p. m.)

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A F T E R R E C E S S

(The Commission reconvened at 1:30 o'clock p.m., upon the expiration of the recess.)

The President. The Commission will come to order.

Colonel Munson. The full personnel of the Commission, the eight defendants, and the reporter are present. The staffs of the prosecution and of the defense as constituted this morning, plus Captain Bruton for the defense, are also present:

Colonel Royall. As the Commission has perhaps learned, the Supreme Court acted during the recess and determined that this Commission does have jurisdiction to try these offenses. I thought that possibly some member of the Commission had not heard it; therefore, I made that announcement. The remarks which I made this morning, as the Commission must have gathered rather an assumption that that would be the action of the Court, are, of course, now appropriate.

(At this point it was agreed between counsel that the decision of the Supreme Court of the United States, referred to, should be read in the record. The decision was read as follows:)

DECISION

"Per Curiam: In these causes motions for leave to file petitions for habeas corpus were presented to the United States District Court for the District of Columbia, which entered orders denying the motions. Motions for leave to file petitions for habeas corpus were then presented to this Court, and the merits of the appli-

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cations were fully argued at the Special Term of Court convened on July 29, 1942. Counsel for petitioners subsequently filed a notice of appeal from the order of the District Court to the United States Court of Appeals for the District of Columbia, and they have perfected their appeals to that court. They have presented to this Court petitions for writs of certiorari before judgment of the United States Court of Appeals for the District of Columbia, pursuant to 28 U.S.C. 347 (a). The petitions are granted. In accordance with the stipulation between counsel for petitioners and for the respondent, the papers filed and argument had in connection with the applications for leave to file petitions for habeas corpus are made applicable to the certiorari proceedings.

"The Court has fully considered the questions raised in these cases and thoroughly argued at the Bar, and has reached its conclusion upon them. It now announces its decision and enters its judgment in each case, in advance of the preparation of a full opinion which necessarily will require a considerable period of time for its preparation and which, when prepared, will be filed with the Clerk.

"The Court holds:

"(1) That the charges preferred against petitioners on which they are being tried by military commission appointed by the order of the President of July 2, 1942, allege an offense or offenses which the President is authorized to order tried before a military commission;

"(2) That the military commission was lawfully

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constituted;

"(3) That petitioners are held in lawful custody, for trial before the military commission and have not shown cause for being discharged by writ of habeas corpus.

"The motions for leave to file petitions for writs of habeas corpus are denied.

"The orders of the District Court are affirmed. The mandates are directed to issue forthwith.

"Mr. Justice Murphy took no part in the consideration or decision of these cases."

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Colonel Royall. May it please the Commission, shall we continue the arguments?

The President. Please do.

ARGUMENT ON BEHALF OF THE DEFENSE
by
COLONEL KENNETH C. ROYALL--Resumed.

Colonel Royall. We had discussed the charge of spying, and we are having prepared, and shall furnish to the Commission at the close of the arguments, copies of the statutes on espionage and sabotage.

The next offense to which I shall refer briefly is the offense under Article 81, which is the offense of relieving the enemy with arms, ammunition, supplies, money, or other thing, or knowingly harboring or protecting or holding correspondence with or giving intelligence to the enemy. The

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same remarks that Colonel Dowell made as to the zone of military operations would apply to the charge of spying, because this statute is constitutional only if it is confined to the area of military jurisdiction.

In addition to that, the evidence does not disclose, as we construe it, that any of this money was given to the enemy, because there is no evidence that the persons who received the money were to use it for enemy purposes. The defendants themselves got the money, but it would take a rather involved and perhaps not very direct or certain construction of that statute to say that they were relieving the enemy.

That statute is designed for somebody who furnishes some supplies or money to the enemy. They did not furnish it to anybody after they got it. They buried the ammunition, and they did not furnish the money, as we construe it, to any enemy.

The same thing applies to the matter of correspondence and giving of intelligence. There is no evidence that they did give any intelligence to the enemy or communicate with the enemy in any way. At the most--and we do not think that is proved--it would be an attempt on the part of these defendants to relieve the enemy in some way, and that would be a matter which might be handled by this Commission under that charge but, of course, would involve a considerably smaller penalty.

The first charge is: "Violation of the Law of War."

That is embodied in the Rules of Land Warfare. We have not been given the opportunity of knowing just what law of war is charged to have been violated. There are a number of them. The only information we have is in the charge itself, which seems to be more or less a repetition of the other charges.

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It is the charge that they passed in civilian dress through military lines for the purpose of committing acts of sabotage, espionage, and other hostile acts. It has been rather difficult for us to find any law of war as embodied in the Rules of Land Warfare that includes that specific offense. It may be an offense under the laws of war--at least, it may be broad enough to include one--but we do not know that as a fact, because we do not know what the contention of the prosecution is about it.

If that is called to the attention of the Court, we may want to reply to it, because at present to discuss it we would be sort of moving in the dark. There is nothing in the Rules of Land Warfare or The Hague Convention, which are the two principal documents on it, or in any of the texts that we can find that follow or approximate the language of this charge.

As to that, we say again that this is a sabotage matter, apparently. They may be charging preparation to commit sabotage. It is rather significant that in two of these charges they use the word "preparing" to do something. Of course, preparing to do a thing is not an offense under any law, as far as I know. Preparation is not an offense, but an attempt is. That is the distinction that has always been drawn, as far as I know, in any criminal law.

I shall refer briefly to the matter of conspiracy. What we have said about the other cases applies largely to the question of conspiracy. Of course, a conspiracy to do these other things is subject to the same restrictions and limitations as the others.

Assuming that this Commission is not going to try this

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case by any technical definitions--I do not know what you are going to do; ordinarily a court has to follow the language of the charges--but conceding a broad discretion in this Commission, conceding that it can take this language and can modify it or interpret it so that it includes some offense, though we do not think that should be done--but if it is done--let us see what these men have committed. Let us see the essential facts or things that they have done, if they did have the criminal intent, which I am going to talk about later.

They came here out of a submarine and took these explosives. They were not in a position where they were immediately usable. In order to make them usable, they first had to take them out of the boxes, which it was said took an ax to do, or various tools. I do not believe I would have wanted to use an ax if I had known that there was any kind of explosive in the box. Anyway, the F. B. I. finally got the explosives out. Then they had to assemble them in various ways before they could be used at all. Then, before they could be used for any sabotage purposes, they had to be taken somewhere and placed at a location where damage could be done.

Well, these defendants never did dig that material up. Of course, it can be said that they did not because they were apprehended. Very frequently people are apprehended before they commit any crime. That does not make them guilty of the crime. The law might hear that a man is out on a rampage to kill somebody and may take him into custody because he is a dangerous individual. But that does not make him guilty of the crime he would have committed if he had not been apprehended.

That is true in this case. The defendants not only had

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never dug these boxes up, they never had opened them or assembled the material, they never had located a specific place to put them, they never had made any definite plans about where they were going to put them or made any definite plans where they were going to use them, even taking the evidence in the most favorable light to the prosecution, but they all said, having been separately examined by the F. B. I., that they were definitely instructed to wait a minimum of 90 days before doing anything.

The diligence of the F. B. I. and of the Coast Guard, with the aid of the information given by Dasch, with the assistance of Burger, might have prevented, we will say--let us assume it did--them from committing any actual act of sabotage. Give them full credit for that. We do not want to detract from it in any way. But we say they prevented them from getting to the stage where any real sabotage crime was committed. There again you have the situation where the intent alone, the purpose to commit a crime, is not in itself a crime.

Before leaving that feature of the matter, there is only one other thing I wish to say. It has just occurred to me that we have a fairly good analogy in this case from the newspaper accounts of Hess when he went to England. He flew over to England apparently in a German airplane and, judging from the press accounts, landed in civilian clothes and was found by some civilian authority. There was no question about his being a member of the inner council. But he said, according to the press, that he went to England with no intention of helping Germany. I suppose the circumstances would indicate just as clearly that he had an intention, as it certainly would

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in the case of these boys here, many of whom were acting under the direction of someone else and did not have much choice in the matter. Yet if we believe what we read in the papers, nobody in England has suggested that Hess should be shot. I have not heard of any suggestion of that or that he should be tried and convicted of any very serious offense.

He has probably been interned, according to what the papers have said, but that is not inappropriate. There is plenty of authority to intern people during the war. But England is so much closer to the actual combat area in a broad or specific sense, either way you take it, and there is no reason why they should not feel more strongly about it; and that rather corroborates, if it needed corroboration--it is not denied--what Kerling said about the treatment of the Englishmen who went to Germany on similar missions, or to Occupied France.

So far I have not discussed the intent of the parties. I want to make a statement that is fair to all these defendants. At the same time we cannot stultify ourselves by stating facts that clearly are not correct. I do not think our duty as counsel requires us to do that. I shall have to say that there is a varying degree of corroboration among these defendants in connection with their statements that they did not intend to carry this through.

Without reflecting at all on any of the others, I say that the corroboration in the case of Burger is so absolutely clear and certain from every standpoint that he must be considered in a classification by himself. I want to get ahead of my story long enough to say that I think the defendant Burger on

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the stand under examination by the Attorney General, on direct examination, and on examination by the Commission was as fair a witness and as honest a witness as I have ever seen in any court at any time. There were one or two instances where he could have colored his testimony a little if he had had any inclination to do so. But with all his insistence, which I think must be believed, that he did not come over here for any purpose but to escape mistreatment in Germany, he never varied from the fact that he was a soldier. I am going to read parts of his testimony when I come to that point, and it will reflect the greatest sort of credit on him, I think, to have made statements like that under these circumstances.

Burger said that he was trying to get away from Germany,
but in his immediate group there was George Dasch, who through
training said he was going to take charge or handle this and
turn it in to the F. B. I., so Burger just waited for him to
do it. I am getting ahead of my story somewhat.

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Now, let us look at these intents. Some of these men in their original statements said that they intended to carry through this plan, but on the witness stand said that they had formed an intent not to do so, or were uncertain.

I would not be fair with the Commission if I did not say that the change in their statements from the time they first told the F.B.I. until the time that they got on the stand would raise in the minds of the Commission some doubt about what the real facts were about their intentions. I have got to say that, because it is bound to be true, even if it is somewhat against their interest. That is the only reasonable view, and there is no use of arguing something that is utterly unreasonable.

As to those men, however, what I do say is this: that while some of them certainly intended, according to their first statements, to use these materials at some time, none of them had that fixed purpose that made it in anywise certain that they would do so. That fits into the picture that I have drawn, that this was merely a preparation, and a lot of things might have happened, even if they had not been apprehended, and it should not be treated as if they had gone through with it and succeeded. That is as far as I can go and be fair about that. I do not want to be unfair about it.

I want to talk briefly about the individual cases. If I stood up here and told you everything that every witness said about every feature of the case, we would be here for a week, and I have no intention of doing that; but I do want to call your attention to a few high lights of what some of these defendants said about the intention with which they came here.

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Kerling is the first one I wanted to discuss. He is a boy who rather obviously was afraid to testify accurately about his intentions. He would not tell much to the F.B.I. at all, and finally he told them a pretty straight story. He is a boy who had an army background. His father had been in the World War for Germany, and he had been a Party member. He had been mixed up with a man named Boehmer, who incurred the displeasure of the Party.

He tried to get himself called for army duty, because he was, by choice and heredity, an army man, and he could not get it done. Finally Kappe stopped it, and he was under orders, so to speak, to go ahead with this undertaking, and he did so.

He was not very bitterly anti-American, though, even when he was in Germany. He helped two or three American citizens with their affairs there, one of them in a situation very similar to what he is being charged with, except more serious--communicating some information directly--which he did not do--to Switzerland. And he was not so very strict, because he allowed Neubauer to write a letter to his wife, which was a violation of the rules, and that was done on the submarine.

Then he tells you that he was very anxious to get over here and try to straighten out in some way a triangular matrimonial difficulty; that he left his wife under circumstances that were not very pleasant, and he had some idea of a divorce, and he wanted to get back here to see her.

Whether that was his sole intent and whether he had the intent to commit it, I am confident that he had one of two motives in coming over here, and I think there is at least enough to raise a doubt in the minds of this Commission as to

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whether he would actually have carried through this thing under all the circumstances, and whether at the most he should not be treated as merely preparing to commit an offense and guilty of a lesser offense.

Then we have the defendant Heinck.

Perhaps it might be well if you kept them in mind. That is Kerling on the other side of the post, just so that you can remember him in connection with his testimony, and this is Heinck here in the corner.

Heinck has a rather similar situation to Kerling's, except that he has this added fact which applies probably more largely to his case than Thiel's case. Heinck is a fellow who followed orders. In other words, there would not have been any possibility of Heinck's ever having originated anything of this kind or carried it through on his own initiative. He could not have done it. He was incapable of doing it.

If he had all the criminal intent in the world--and you saw him on the stand--he could not have done it. His situation was that he was in the group with Dasch and Burger, who were not going to carry it through, anyhow, and therefore there was never a chance that he was ever going to do anything wrong. He did not have anybody to lead him to do it.

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There were some things he did not like about German conditions. He was beset by the fear that the Gestapo would get after him, and he is just one of those people who fell into the stream and could not do much but follow it. We have them everywhere. We run into them in the army. I know in the last war you would run into people like that, who did nothing on their own initiative; and Heinck falls into that

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classification. You must have a feeling in the case of a man like Heinck that he did not have personal initiative in this matter at all.

Now, Quirin had a rather unfortunate setting for this thing. He went over there because his wife got sick. His wife got sick and he wanted to go to Germany. If he had not gone to Germany he never would have gotten in this trouble. He got over there, and he came back over here.

I admire him for his frankness. I think he said he never was certain that he ever would have done anything about it. Here is a man who, while he had more initiative than Heinck did and more ability in the way of doing things on his own, at the same time did not commit any act, and there is at least an uncertainty as to whether he ever would have done so. He did not make very frank statements to the F.B.I., but he explains that by the fact that he is beset by a fear of the effects upon his family. His situation falls within some of the general rules I have already discussed.

Now, we have the boy Neubauer. Neubauer is sitting there next to Kerling, second beyond the post. Neubauer has this to commend him. Neubauer was a soldier, wounded in action, carrying with him now both the scars, which the Commission has seen, and the shell fragments which he got during the Russian campaign. He was drafted in the German Army, and, although he had been in there a year and a half, he had never got beyond the rank of private.

He had been wounded. He followed along. He was hardly himself when he got into this thing. He had been sent to a hospital, back, to a convalescing place, back, to a convalescing

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place again, and finally, from the last convalescent place, into this enterprise; and we all know how those things run. Everybody on this Commission has seen men who may have the physical appearance of being bodily sound; yet with a wound of his nature, and the great effect upon his nervous system, having been struck dumb for several days, he is hardly to be judged by the criterion of a well and sound man.

His nervousness was much more apparent on the stand than that of anybody else. I do not mean that he put on a show of it, but you could tell by seeing his hands. You can see how the white comes into a man's hands when he grips hard. You have all seen that.

I donot think that this boy, with this nervousness and with his physical disability, would ever have carried out this plan. I think he is entitled to very careful consideration, because of his military service, and it is perfectly apparent that he was acting under orders, and just under orders.

He wrote a letter to his wife in the submarine, expressing some doubt as to what he would do; and when he got to Chicago with Haupt they decided at that time that they could not go through with it. That was before he knew that the F.B.I. had it. He knew it was an impossible task. That is his situation, and I feel that he is entitled to a good deal of consideration, for the reasons that I have stated.

The last of those I am going to deal with, before Colonel Ristine addresses the Commission, is the man Thiel. Of the group that I have talked about now, without seeking to make any invidious comparison, Thiel is the one who probably acted less on his own individual volition than any of these five.

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You remember him on the stand, I am sure. He does not understand what the plan is all about. He did not know within a thousand dollars how much money he had. He did not know how much money he had when the F.B.I. had the belt right there.

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He went over on a ship with George Dasch. He met him there. Then he met him later. Dasch and Kappe talked to him at some situation, and he just "jined up," as they say in our part of the country.

I do not believe that that boy ever grasped what he was doing or what he was supposed to do. If possible, he is even more incapable than Heinck was for carrying anything out on his own initiative.

He came into it at a time he had lost a brother. One had been killed on the Russian front, and another had been seriously injured. He just heard of it, and he is not a very strong type, anyhow. Together with the circumstances of being with men of more intelligence and force, like Dasch and Kappe, talking to him, and with the sorrow and grief of his brother's death, he just went along, and he did not understand. He could not tell you on the stand much about what had happened. He does not know even now how much money he had. He could not tell you now. Knowing the F.B.I. had his money bag available, he could not tell them how much he had.

A fellow like Thiel probably ought to be kept in confinement or interned, at least, but he is not a man who would be able to originate or start any of these plans or who could have carried them out.

As he said on the witness stand, he had never been over anybody in any position he had ever worked. In all his life-

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time he had never been given enough authority to have one man under him. When a man reaches his age in life and has been in the same trade the entire period and has never reached a stage where he even had control of a single individual, he has told you in a few words the type of man he is.

I believe he did say that he was something in one of the Bunds. They had some position and did not who to put there and someone said, "Let's make Thiel that," and he did not know what it was, just like he did not know how much money he had, and he just rode along.

I am sure that everybody in this room had a feeling of sympathy for Thiel when he got off the stand. He was just being, as they call it in the mountains of North Carolina, chinking wood, to fill in between the chinks of log cabins. He just floats along. He had no initiative and no ability to carry out any criminal plan.

May it please the Commission, I have covered all the discussion of this matter except the discussion of the defendants Haupt and Burger, and some general remarks in conclusion. I say this at this point only by way of brief summary. We think none of these men are guilty of spying for other reasons, but principally because the charge did not show it and the facts did not show that they ever endeavored to obtain information for the purpose of communicating with the enemy.

We say, on the other charges, that even if you give them a very liberal construction, they are not guilty of any offense which, either by the precedent of the criminal law or any other precedent, in accordance with the treatment given to people in

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Germany or England or on any other basis, should be punished with extreme severity.

The President. Colonel Ristine.

ARGUMENT ON BEHALF OF THE DEFENDANT DASCH
by
COLONEL CARL L. RISTINE

Colonel Ristine. If the Commission please: I would like to say a few words for the defendant Dasch. At the outset I would like to state to the Commission that if I should make any unkind remarks about anybody, it is not in any way intended as personal. I consider myself, as a member of this Commission, appointed by my superior to appear here, and anything I say will be said in an effort to be helpful to this Commission in arriving at a fair and just verdict, and not because I am employed as counsel or have any interest in the outcome.

At the outset I wish the Commission would consider two things as I argue this case. The first proposition is this. I think you have heard enough evidence now to know that, except for the action which the defendant Dasch took, this would in all probability be an unsolved problem today. I do not think that eminent counsel for the prosecution will even dispute the proposition that it was Dasch who came to Washington and who laid this case with the F.B.I., with the solution appended thereto. That is one thing I want you to consider all the way through as I present some of the high lights of this case.

The other thing is this. I want each member of this Commission to try to put themselves in the position in which Dasch put himself. Now, that is difficult, because we Americans have difficulty in putting ourselves in the position of somebody

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who was born in Germany and who, in spite of their dislike for certain things in Germany, do have some filial ties with Germany; but I wish you, and each one of you, would try to put yourselves in the position in which he found himself. He went back to Germany before Germany was at war with the United States, at a time when I think we will all concede Germany was doing everything she could to prosecute her war in Europe and not doing anything which would precipitate our getting into the war.

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After he got back there he found things so different from what his mother had led him to believe they were that he wanted to get out of Germany.

And here is what I want each one of you to consider. Figure out, if you can, under those circumstances, what he could have done or anything he failed to do to carry out his purpose and, in turn, what he actually did. I believe if we will seriously consider that, we may be able to place a more nearly correct evaluation on the testimony.

Now, I want to discuss his case from about three aspects. In his case intention is the big factor--intent. I want first to discuss what we have in this record which will aid us in determining what Dasch's intention was before he left Germany. I think we will all agree that if he left Germany with the intention of doing what he actually did when he arrived in the United States, then he is entitled to a verdict of Not Guilty with respect to every charge that is pending here against him.

I first want to discuss what there is in the record to disclose his intention while in Germany. Then I want to discuss what is in the record disclosing his intention at the time he landed, and then to discuss his intention as disclosed after he landed.

What do we find that would throw any light upon his intention while in Germany?

I think, to place a correct evaluation on that question, we will probably have to take up a few items before he went back to Germany. The first thing that suggests itself to me is this: While in America, and at a time when the Bund and other German organizations were running full tilt, Dasch did

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not belong to any of those organizations, not a one. He told that to the F.B.I., and they have the records. He told them at the outset that he never had belonged to any of those organizations; and I take it that if he had made any error in that statement they would have produced the records here to advise this Commission.

Secondly, his own brother went back to Germany on a visit, and he came back to this country rather enthusiastic about what he thought Hitler was doing for the benefit of the people of Germany. Dasch took the contrary view in a heated argument, and it even reached such a stage that his own brother ordered him away from the house and said, "Until you change your opinion about Hitler, don't ever come back again."

The next thing in the record is that we find him on a boat going from San Francisco to Japan, and there are thirty or forty or more Germans going back to Germany. Dasch does not take part in their celebrations and ceremonies and their "Helling" of Hitler, and their folk songs. And what do we find? We even find that the accusation was made to Thiel on the same boat that he was a member of the F.B.I. planted on that boat to spy on the other Germans. And what did he get out of it for his pains? Four or five of them jumped on to him and beat him up, gave him a good beating up. It is true, he told them that he was willing to take them on one at a time; but they did not take him on one at a time; four or five jumped on to him and gave him a good beating up, and they said, "When we get back to Germany we will report you. We will make a good Dutchman out of you. We will report you."

He gets back into Germany.

I might say that when Kerling was on the stand he corrob-

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orated Dasch with respect to what Dasch's intentions were while in Germany. Do you remember, when Kerling was on the stand--and you will find that on page 2327 of the record--Kerling said that he was sure the mission would fail because Dasch was not any too secure and because Burger had spent 17 months in a concentration camp.

I think, if the Commission please, we can agree that Kerling has not any motive for going upon the stand to aid Dasch. Dasch is the man who came down, as I said before, and laid this whole project in the lap of the F.B.I.

Again, we find others testifying that Dasch took no interest in the school; that he did not study; that he came to classes late; that he did not wear the uniform which was given to them there, and they all distrusted him except Kappe and Barth. Barth married Dasch's first or second cousin. Kappe is the man who gave Dasch his first employment after he got back to Germany, as a monitor on the radio. He had what anybody would term in war time a "soft job" at 600 marks a month. I take it, in terms of German pay, that must have been high pay. I think they pay their soldiers about 1 mark a day, or probably 30 marks a month. He was getting 600 marks a month. But he became so dissatisfied with the conditions there, the conditions of absolute servitude, of absolutely slave conditions which he ran into--and he could not cry out against them; he could not say anything against them while he was in Germany--that he made up his mind that he must get out of Germany; in any manner in which he could, he must escape and get away from Germany in order that he might freely express himself against those things which he abhorred.

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The witness Heinck, when he was on the stand, testified about matches. There was quite a bit of discussion about these matches which they were to use to write messages if they wanted to send word back to Kappe in Germany. They had a match that was specially treated, and you could write on a sheet of paper and absolutely nothing would be discernible. In fact, it would not even scratch the paper. Then by a chemical process you could bring the writing out.

When Heinck was on the stand and he was asked about those matches--and you will find that in the record at page 2431--Heinck said that Dasch put those matches on a table in the submarine and he did not even bring them with him when he got off the submarine. He absolutely deprived himself, if he had ever had any intention of writing back to Kappe, of the only means by which they had agreed upon for communication. That was destroyed by his own voluntary act.

Now we find Dasch talking to Burger while in the school. Why is that significant? That is significant, if the Commission please, as disclosing the man's mental attitude while still in Germany.

Let us see what Burger said about that. We will find it on page 2664 of the record. When Burger was on the stand I asked him this question:

"Q Let me refresh your recollection by reading from page 33 of your statement. It is the third paragraph:

"'It was during one of these tests conducted by George Dasch that I first got together with him and began to get some idea that he was not the absolute Nazi

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which he pretended to be."

Here is what Burger says:

"Yes; I remember now.

"Q Would you tell the Commission about that incident?

"A Yes.

"Q If you recall.

"A Yes. George Dasch and I were walking from the school to a small tavern nearby, about 45 minutes to walk, and on the way over he asked me different questions, and also he came to talk on my experiences with the Gestapo. So I expressed my feelings quite impulsively, and he immediately stopped me and told me I should not say one more word about it; there would be a time when he would ask me more about that. But he did not express anything about his intentions."

Now, if the Commission please, I think we can all agree that in that matter he did express louder than words what his intentions were. Suppose he had been a loyal Nazi, and one of the underlings under him as the leader of this group wanted to disclose by his statement his disloyalty to the Nazis he would have encouraged him to talk and would have immediately reported it to his superiors and thereby won recognition from his superiors and possibly promotion. But he takes the absolutely opposite course. As soon as Burger had said enough to disclose his innermost feelings, Dasch said, "Stop. Say no more." But he discloses another thing. He said, "There will be a time when I will bring this subject up again."

We know now that when the subject was brought up it was brought up after they landed in the United States.

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After interrogating Burger quite a little bit I then said to Burger:

"Q Did not that indicate to you that he was not the Nazi he had pretended to be?"

Now, listen to Burger's answer:

"A I had this opinion not only from this statement or from this specific incident, but I had this feeling not only that time but several times."

In other words, that was not the first time that he had observed Dasch and what Dasch was doing, which indicated to him, Burger, that Dasch was not actually a Nazi. That was disclosed by Dasch's lack of interest in the school. Let us see if Burger did not say something about that. This is on page 2666 of the record:

"Did you notice that he lacked interest in the school work?"

"A You mean, that he was not interested?"

"Q Yes."

"A Yes; I noticed that. Everybody noticed that."

He says, "Everybody noticed that." If the Commission please, can it be possible that a man who desired to come over on this side and to commit sabotage would go to a school where they were teaching him how to do it and how to avoid detection, and that he would not pay any attention to the instructions and would not learn how to do it, when his life would be involved if he came over here and bungled it?

I asked him this question:

"Q In other words, you thought he was opposed to carrying out the plans that they made in the school; is

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that right?

"A Well, the carrying out part, you know, I don't know, because he did not confide in me, but I did know and I realized that by not studying he was not able to carry out any orders given to him. See? Specifically, for instance, the explosives were not in our hands, the ready made explosives were not in our possession any more. He was not able to prepare a single formula or a single explosive by formulas because he simply did not know it.

"Q In other words, he had not studied them enough even to know how to mix them?

"A That is right."

Now, if the Commission please, how can we ignore those facts in evaluating the intentions that were in Dasch's mind while he was still in Germany? It seems to me that those things speak louder than any number of witnesses who might say that he orally proclaimed his intentions. In other words, we speak unconsciously by our actions more truthfully than when we make some prepared speech by which we want to mislead somebody.

What was Dasch's statement to Traynor? You will recall that Mr. Traynor is probably the F.B.I. agent who spent the most time talking to and interrogating Mr. Dasch; and I just want to read a few statements which Dasch made to Mr. Traynor.

While Traynor was on the witness stand--and I am now reading from pages 701, 702, and one or two other pages from Traynor's testimony--this question was asked Agent Traynor of the F.B.I.:

"Q Could you tell the Commission what the defendant

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stated to you as a reason why he wanted to tell the whole story to you in his own way?

"A He on coming to my office advised me that he had gone through considerable mental strain and hardship for the past several months; that he had a long story to tell and that he wanted to tell it, beginning at the very beginning and tell it in his own way."

If the Commission please, the F.B.I. agents interjected into this trial this question: Why did not Dasch come to our office immediately after landing?

The answer to that question is right there in that statement. The very first statement, or one of the very first statements he made to Traynor, explains it:

"He on coming to my office advised me that he had gone through considerable mental strain and hardship for the past several months; that he had a long story to tell and that he wanted to tell it, beginning at the very beginning and tell it in his own way."

It is difficult for us to realize the mental strain that a man goes through when he is living in a country where, if he makes one false step, that is the end.

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If he just makes one small statement; if he just shows his hand once!

Do you not recall the statement which was read, in which Dasch said to Kappe, when the report was brought in by that other person to Kappe's office that the Russians had executed or summarily buried some 30,000 or 35,000 Jews?

Dasch said to Kappe, "My God. This is a hell of a war. This is a hell of a war when they do things like that."

Kappe immediately said to him, "What is the matter with you? Are you going soft? Are you getting soft? Why, that is what we are here for. We are here to execute these people."

Dasch immediately said, when he related that incident, "I made a mistake then. I made a mistake."

But for some fortuitous reason they did not do anything to him about it. But they might have. I will call your attention to the fact that for even a lesser reason--for even a lesser reason than that--people went to the concentration camps. It is just fortunate that that was not the end of Dasch right then.

Let us see what he said further when he first appeared before the F. B. I.

"I believe in the course of that story which he told, he told you many other things about his experiences in Germany?"

"That is correct."

"And that he had formulated a desire on his part to fight those powers in every way that he could?"

"That is correct."

"And that he could not fight those powers in Germany?"

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"That is correct."

"And that he, therefore, had to get out of Germany?"

"That is correct."

"And that this method by which he entered the United States was the only method that had offered itself to him to accomplish that desire to get away from Germany and into some place where he could fight the ruling powers?"

"That is correct."

There is more, if the Commission please, along the same line.

Is it possible that Dasch did not have that mental attitude? That he could have thought up those things to say to the F. B. I. when he appeared down here voluntarily and turned this whole thing up? I do not think so, if the Commission please. I do not believe it is possible for a man to so plan ahead and to so relate in conversational form so many things that all point to the one conclusion, namely, that he had no intention of doing other than what he said.

Why, do you remember what one of the F. B. I. men said about the 254-page statement, covering a multitude of subjects?

He said, "We checked it. We did not check all of it, but we did check it, and insofar as we checked it, we found everything to be true--everything."

Let me call the attention of the Commission, please, to page 2670 of the record. This is something that has to do with Paris. It is not entirely clear, but I take it that whether it is clear or whether it is not clear it at least shows an intention on the part of Dasch at the time he was in

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Paris, and before he went to Lorient to take the submarine, as to what he would do when he got into the United States. I asked Burger this question, appearing on page 2670:

"Well, don't you remember that he told you that he either told or intended to tell that newspaperman of his intentions of getting in touch with the F. B. I. upon his landing in the United States?"

"That is right, sir."

"Had he seen him with some American in Paris?"

"I don't know if he was an American. I saw him sitting with a man who, he explained to me later on, on the 14th of June--that that was an American to which he had explained that he was to tell the F. B. I. about everything."

I say to the Commission that it makes little difference whether that intention was carried out or whether it was an intention which he had in his mind when he was in Paris. In either event, it does disclose an intention on the part of Dasch not to carry out the plan. It is just one of many other incidents which I shall call your attention to.

Let us consider the incident of the handkerchief. I have already related how Dasch made it impossible to write the note by leaving the matches on the submarine. Now, let us see about the address. I hold in my hands a photostatic copy of the writing that was on Dasch's handkerchief. Dasch stated in his statement that he was so little interested in communicating with anybody back in Germany that he had not written the Lisbon address very legibly on the handkerchief. That writing was put on the handkerchief in either France or Germany

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--I do not know which--but it was put on the handkerchief before they left for the United States.

There were two things which Dasch had to do in order to make it possible for him to keep in communication with Kappe and also with the leader of the second group. He had to give to the leader of the second group the name of some person in the United States with whom that leader could get in touch if he wanted to know where Dasch was, if they lost contact, and Kappe suggested that Dasch give his brother's name. His brother is a naturalized American citizen living in the United States.

If Dasch had said to Kappe, "Well, I could not give my brother's name and address," that might cause Kappe to think, "Well, if you can't do that, we don't dare send you back to the United States with this group."

But Dasch did not want to get his brother involved, and he did not want to get any other friend involved, so he gave a fictitious and erroneous address of the brother. By that act he made it impossible for the leader of the second group to contact him, and by writing the Lisbon address so that nobody could read it--and I submit it; there it is (indicating), the first address on there--he could not write back if he wanted to.

Also, he forgot what chemical was necessary to be used in order to bring out what was on the handkerchief, although he wanted to help the F. B. I. in bringing it out. I think that by the time the F. B. I. got its chemist in and Dasch discussed it with the chemist, they finally decided or Dasch finally recollected that ammonia fumes might bring it out. You see

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the address there. They all said--the experts said--that the most illegible, the most difficult to decipher, was the Lisbon address.

What does that mean? That simply means, if the Commission please, that he thereby, before he left Europe, made it impossible to continue to have corresponding relations, he with Germany if he wanted to write to Kappe, and the second leader had no way of writing to Dasch, because the address of the brother was fictitious.

Agent Wills interrogated Dasch quite at length. Let us see what Dasch told Wills about his intentions. That will be found on page 589 of the record.

"Did he tell you at what time in France or Germany he formulated the idea that he would not go through with this plan when he got to this country but would contact some person in authority about the matter?"

"I don't recall that he mentioned any exact date."

"Could you give us some idea of the time?"

"Yes, sir. To the best of my recollection, it was sometime during the latter part of November of 1941 or the early part of December of 1941."

Now, think of that. That was the time when Dasch first learned of the nature and character of the mission which Kappe had selected him to come on to the United States. In the fall of 1941, November or December, was when Dasch first learned that Kappe had in mind sending a group or more over to the United States and had him selected as one of the group. Dasch told the F. B. I. agent that at that time he formulated

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the plan or the idea that he would not go through with it.

Let us see, now, what Wills had to say about Dasch's desire to get out of Germany. Wills on cross-examination said this:

"Did he tell you that he was very desirous of getting away from Germany in order to fight the ruling powers of Germany?"

"Yes, sir, he made that statement."

"Did he tell you that he saw in this opportunity to come over with this group, which he did come over with, the fulfillment of that desire on his part?"

"Yes, sir."

"And that he went to this school in order to carry out that purpose in his mind? Did he tell you that?"

"To carry out the purpose to come over here?"

"To get away from Germany, so that he could fight the ruling power of Germany?"

"Yes, sir, he made that statement."

"And did he tell you that because he never intended to carry out any of the plans of his group, he didn't pay much attention to what he was being taught over there?"

"Yes, sir, he made that statement."

Everybody in the school corroborates him on that. Everybody who took the stand and was asked what kind of interest Dasch took in the school said that he did not take any interest. Several of them said that they were sure he would not go through with the plan because he did not take any interest

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and did not study. Burger said that Dasch realized that even if he wanted to carry out the plan, he could not carry it out because he did not study.

Dasch talked to Lanman. Let us see what he had to say to Lanman. Understand, I am not reading all the testimony on these given subjects; I am just hitting the high lights of them.

On page 492, here is what the witness Lanman said when he was on the stand. I am not going to read the question in its entirety. There was a question and argument, and all, but I am just going to read the gist of the question and the answer. Continuing the question:

"that he, Burger, had definitely decided in Germany that he did not intend to carry this plan out and that without openly confiding in each other there was some understanding between Dasch and himself as to their attitude toward Germany?"

Apparently that was cross-examination of Lanman about what Burger stated to him. Remember, when Burger was being interrogated, he was being interrogated separate and apart from Dasch. None of these defendants was interrogated in the presence of any other defendant, and none of them had any opportunity after they were apprehended to talk with one another.

"that he, Burger, had definitely decided in Germany that he did not intend to carry this plan out and that without openly confiding in each other there was some understanding between Dasch and himself as to their attitude toward Germany?"

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"Yes, sir, just as we have in the statement right here."

Lanman showed where in Burger's statement that was contained, namely, that they had some understanding, without specifically saying it in words, that each knew that the other felt the same way about the situation.

We had a very interesting incident here with respect to Dasch opposing Kappe when Kappe suggested that Burger be put in as second in command. If you read only half of that, you might get an erroneous impression. Kappe thought Burger was the man to be second in command of this group that Dasch was in. The rule was that if Burger was second in command, he would travel with one of the other two, and Dasch would travel with the remaining one of the two. In other words, Dasch and Burger could not travel together in the United States if Burger was the second in command. That was the reason why Dasch fought that proposition with Kappe. He had a big argument about it.

Let us see what happened. I read from page 2689 of the record. By the way, this is a question that was asked by the Commission of Burger when Burger was on the stand.

"Why do you suppose they did not make you the leader?"

That was when Burger was on the stand. His answer was:

"Well, Kappe wanted to make me the second leader, and Dasch opposed it; and, in fact, Dasch told Kappe that--in front of the other two boys and in front of myself--that he had no confidence whatever in me and that I would not be able to be a leader of any group

o9

in the United States because my English was so very bad, that I just didn't have the ability, and besides that I looked so very much like a Dutchman, he says, that it was no use of giving me any responsibility whatever."

I say that if we take that explanation standing alone we might get a very erroneous impression about the situation. Let us see what Burger said in explanation of that situation. We find that on page 2714. This statement was read into the record by me and was taken from page 49, the first paragraph on the page of the signed statement of Burger which was given to the F. B. I. Here is his statement, and it is quoted:

"The cause of this argument was that George Dasch had stated that he saw no reason why the group should engage in any activities whatsoever in the United States for three or four months after their arrival there."

Now, why was George Dasch arguing for that proposition? The other proposition appears later in the same paragraph. Why was he arguing for a delay of three or four months? Is there anybody on the Commission who doubts the fact that he wanted three or four months in order to work out in his own mind the best means and the best method of doing what he actually did when he got here?

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I do not think anybody on this Commission thinks that Dasch thought they needed three or four months before they started activities, if he intended to carry out those activities.

Now, let us see what Burger's statement is. Continuing with part of the quotation of what Burger says:

"I am sure he had in mind the fact that this would give him sufficient time to expose the plan."

Continuing now with Burger's quotation:

"Kappe, on the other hand, ordered the group immediately after our arrival in the United States to begin work in a small way. Another cause of the argument was that George wanted me to go with him, while Kappe wanted me to go with Henry. The reason George wanted me to be with him was, as previously stated, we had, without openly confiding in each other, arrived at an understanding as to each other's attitude toward the present regime in Germany. Kappe had instructed that I should go with Henry Heinck and that George should go with Richard Quirin. However, George told Kappe that he had no confidence in me, and did not believe that I should be allowed to go with Henry. This caused another argument between Kappe and George, but George won, and it was agreed that I was to accompany George. I was to travel with George when we arrived in the United States, prior to our establishing headquarters in Chicago."

Now, if the Commission please, does not that disclose

2b

the intent on the part of Dasch, at the time he is in Germany and at the school, that he is not going through with the plan and that he wants traveling with him, when he gets here, somebody in whom he had some confidence had the same idea of things. You see, Dasch had read the record respecting Burger, and he could not conceive how a man could have spent seventeen months in the concentration camp and still have any loyalty left for the ruling powers of Germany; and I think later facts developed that he was right in that surmise.

If the Commission please, those are the high lights, as I view this testimony, to indicate Dasch's intentions to do just what he did after he got to the United States, before he left Germany.

There are two other thoughts. On page 2714 it appears that Dasch fought for sixty or ninety days before action was to be taken, and that was agreed to.

The President. Colonel Ristine, if you will pardon me, I think this is a good place to pause for a slight recess of ten minutes.

(A short recess was had, after which the following occurred:)

The President. The Commission will open.

Colonel Ristine, will you proceed with your remarks?

Colonel Ristine. I think I had just referred to the fact, when the recess was taken, that on page 2714 it appears that Dasch had fought and argued with Kappe for the additional time before anything was to be done after arrival in this country.

It also appears in the record, but I cannot just now give

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you the page citation, either in Dasch's statement to the F.B.I. or in his testimony, that Dasch also argued with Kappe and was successful in insisting that these groups come over here unarmed.

Now, if the Commission please, when I say "unarmed" I do not mean to say that they would come over here without the explosives that came in the boxes that were sealed, but I mean that they were not to carry any firearms or weapons on their persons.

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I want to refer now to page 2530, which possibly I have touched upon a little heretofore. This is the testimony of Dasch when he was on the stand, respecting a conversation which he had with Burger, appearing on page 2530 of the record:

"Q Just tell us the conversation you had with him.

"A On the first Saturday night all of us went over to a restaurant about thirty or forty minutes' walk from school, and Burger and I walked two or three hundred yards ahead of the others, and I said, 'Tell me your side of the story of this internment. The other side I know.' So he merely said, 'Why, the dirty'--I can't recall just the words he used--'that dirty Nazi, Himmier,' he said. I said, 'That's enough. Please keep quiet. Don't say nothing more. The day and the time will come when I will reopen it again to you, but now do me a favor and say nothing, not even that I asked you. Forget it.'"

Let us consider that, if the Commission please, in the light of conditions as they existed in Germany and as they now

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exist in Germany. If someone had overheard Burger making that statement to Dasch and Dasch did not immediately report it, it would have meant the concentration camp or something worse for both of them.

Is it conceivable--and I say that because we are going to get into this other question very shortly--that Dasch would jeopardize his own life and safety by listening to a part and tell a man not to continue with the whole, but that he would bring it up later, when he knew that if anybody found it out, either then or later, he would be summarily disposed of? Is it possible, after he landed on the shores of this country, that the appearance of one unarmed Guardsman would cause him to change his ideas about going through with this project and cause him to decide to turn the thing in? Why, I say, if the Commission please, he took his own life in his own hands several times in Germany and, as I will relate, several times after he got back here; and, of course, it is not conceivable to me that, through any fear to himself, he changed his plans after he met the Coast Guardsman.

Let us read a little bit further on this. Here is what Dasch says about this Burger incident, when he talked to Kappe about it. I am reading again from page 2530 of the record:

"I asked Lieutenant Kappe, 'As far as you know, did that boy get sent to a concentration camp for his own personal reason or what?' He merely said, 'He made a mistake. He wanted to help the Polish people.'"

For that offense, seventeen months in the concentration

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camp. He wanted to help the Polish people. That is Kappe's explanation of what happened to Burger--because he wanted to help the Polish people. Why is it any wonder, if the Commission please, that Dasch said, "The massacre of all those Jews--what kind of a war is this? By God, when they slaughter people like that, what kind of a war is this?"

It is a wonder that that did not mean the concentration camp for Dasch. Now, all the time that he was in Germany and trying to get out he was under that mental strain that he had to go along with them to the point where they would permit him to come back, even though he abhorred everything in connection with the school.

I say to the Commission that I do not see how you can possibly interpret this testimony and say that after he arrived in this country he changed his mind, but still can be corroborated by all of these facts and circumstances over which he had no control after he arrived in this country.

Now, let us see what kind of man Dasch is. Page 2690 is the page of the record that I am referring to now. This was a question by the Commission:

"Q What did you think at that time was the reason for Kappe's confidence in him?"

That is directed to the witness Burger.

"Well, in fact, I did not like it and I could not explain it. You see, it is very simple. I am a soldier, and if a soldier feels that another soldier always is preferred and that he can do what he wants and the other one has to obey, that is not good for the spirit of the troops.

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"Q Did you think at that time that possibly Dasch was a fanatical Nazi or idealistic Nazi?

"A No, he was not. He never was. In fact, I do not believe that. You see, in order to be a fanatical Nazi a man has to study national socialism and know something about it. I believe in order to be a fanatical Nazi he has to cooperate and stand a lot and go all through that, and he did not. He could not be a fanatical Nazi."

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I do not think there is any doubt in the mind of any member of this Commission that Burger spoke from the heart when he answered that question.

Let us turn over to pages 2694 and 2695 on which the same subject is pursued a little further. These questions were also asked by the Commission:

"Q How would you describe him in talking to somebody who had heard him talk and had said, 'Well, what kind of a fellow is Dasch, anyhow?' What would your answer be to that? What would you say in German?"

I am skipping some colloquy there about how long it would take to answer it, and now I am reading the answer of the witness:

"A Talking about his ability and his occupation and his job and his work, he is a first-class salesman. As a man I think you could address him as a friend. I am quite sure of that. As far as his political ideas are concerned, I do not think that he has any clear view, with the exception of fighting against injustice done over there right now. I believe that he is--that is the main thing which occupies his mind right now and pushes everything back in the background."

Now, if the Commission please, I do not believe you can consider this record here as a whole without inevitably coming to that conclusion about Dasch, that he abhors that which is going on over there in Germany; that he has never advocated or stood for it, but has always fought it. Why, he even told the Commission about his troubles in this country with his own kinfolds, and with the labor unions and with other groups. He never would join any of these German organizations. He did

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go to one or two of their meetings upon the special request that he join to see what their attitude was, but he did not like their attitude and refused to join. He went back to Germany at a time when Germany was at war and when this country was not at war, and right after his mother had visited over here and assured him that Hitler really was doing something for the masses of the German people and doing a lot of good for them, and he thought, "Well, maybe I am wrong; maybe I have fought him all along and maybe I am wrong." And then, when he got back to Germany, he found that if anything conditions were worse than he had ever thought they could be.

Now, let us consider the second phase. However, may I mention right now one of the motivating factors in this case with respect to Burger. Burger and Dasch are rather intertwined in this record. Referring to page 2696, these also are questions propounded by the Commission:

"Q Do you consider yourself still loyal to Hitler?"

"A I do not consider myself, sir, because I am not a German citizen any more. When I came back from the United States I did not re-apply for German citizenship.

"Q You considered yourself while you were in Germany still an American?"

Now, get the significance of this answer:

"A Well, I didn't do that, either. I have to tell the truth. I didn't consider myself as an American either. I came back and I worked in and for the party, and in 1934 that happened."

What he refers to when he says "that happened" is the Roehm massacre. (Continuing reading):

"That blew up everything, every ideal, and--well,--"

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That blew up everything for Burger, his ideal, and thousands of his party members were massacred over there in a purge and he just lost all confidence.

Now, mind you, that was in 1934; and Burger tells this Commission that from that time forward he did everything he could legally to get out of Germany, and that this was the first opportunity that he had when he was offered a proposition to go to this school and to come to the United States.

Just a few more questions and answers:

"Q Was that when you lost your loyalty to Hitler?

"A That is right.

"Q Because he killed your friend Roehm?

"A All of them; not only Roehm; there were thousands of them."

And he related to this Commission how he escaped that purge. It just happened that at the time of the purge he was detailed as an aide to one of the High Commanders over there who had the confidence of Hitler; and that is the only reason that he is here today. If he had not been with that particular man over there the chances are he would have been included in the many thousands of Roehm followers, because he was rather high up in the councils of Roehm.

Now, let us consider another thing before we go further. Let us see if this man Dasch is a man who lacks courage. Let us be fair and see what the record shows as to whether he is a man who lacks courage.

On page 2697 are further questions by the Commission:

"Q Did you at any time consider yourself in personal danger from the others of your group?"

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These questions are directed to Burger.

"A. I had a very uncertain feeling once. I would not say personal danger. I don't know."

I might recall to the Commission what incident he is referring to there. Do you remember in Burger's testimony when he testified that the other two members of the Dasch group came up to his room in the hotel? I believe he said he was in the bath room, but could see them through the looking-glass in the bath room. They opened the drawer of the desk and got out the letter that Dasch had written to Burger when he left New York for Washington. They read it; one read it and handed it to the other, and he read it. And do you remember that Burger said he did not know for sure what might happen, but that he got out of there right away, with the other two boys, and got them away from there and got down on the street?

Let us see why he did that (reading):

"What were the instructions"--

And I am reading from page 2697--

"What were the instructions of Kappe to each and every one of you as to your action in case any others of the group failed in their mission or their loyalty to Germany?"

"A. It was pointed out to us not only once, but repeatedly, and also at the last meeting we had at the Zoo restaurant, where the official banquet was, in order to farewell and give us our last introductions to the high bosses of the German High Command, it was pointed out clearly, and there is quite a number of witnesses for that, even if their memory is not so good any more, that any one

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who exposes the plan is to be removed, and if anyone kills any of the boys because one squealed, they told him very plainly that he did not have to be afraid of any consequences when he came back to Germany."

That was the law laid down to those groups when they came to this country; and if there is anybody on the Commission that doubts it, I do not understand that position.

Now, what did Dasch do? When Dasch landed in this country and failed to carry out the command of the submarine captain with respect to the guard he took his life in his own hands. With three other men and two sailors having witnessed, just two or three hours previously, what the orders were if they met anybody on the beach, does he lack courage? Is he afraid? I do not think anybody could properly say that about him.

I want to get into the record now what the directions and instructions were when they left Germany as to what should happen to anybody who faltered or failed in the plan.

Furthermore, let us consider an incident that happened in the hotel. If the Commission please, a question has been propounded as to why Dasch did not immediately rush to Washington and report this to the F.B.I. Dasch is not unmindful of the orders that the other three had. If he made a false move--just wipe him out. That is all. He thought Burger felt the same way that he did, but they had not confided in each other so that either could be sure of the other.

What happened at the hotel? I am reading now from pages 2675 and 2676. This is Burger's testimony:

"A Well, I recall very distinctly that he told me

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right in the beginning"--

This is Dasch talking to Burger, now:

"--that we would have to fight it out if I don't have the same opinion he has.

"Q Or do you mean intention?

"A Intention. I mean, intention.

"Q Why did he say that you and he would have to fight it out if you did not agree with him?

"A Well, because he told me he never had the idea of following orders, and that was the reason why he didn't care to study and listen to all that was taught at the school. He didn't take any interest in the school.

"Q Because he never intended to carry it out?

"A That is right. That is what he told me Sunday morning."

I have skipped a few questions there:

"Q Well, what? Tell the Commission what was to happen if you did not agree with him.

"A He told me that--well, that we would have to fight it out, you see. That is all.

"Q And one or the other would go out the window? Is that right?

"A Out the window. That is a fact.

"Q Of the 14th floor?

"A Fourteenth floor.

"Q And what did you tell him?

"A I believe I smiled to him and told him that there was no reason for anyone going out the window and there was no reason to fight it out because I felt very

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much the same way, and I could have told him the day before, the night before, that that was the idea.

"Q In other words, that you and he agreed, and therefore there was not any occasion to fight; is that right?

"A That is right. That is right, sir."

Is it possible that on the 14th floor of a hotel in New York City, with the windows open, that the defendant Dasch would disclose his innermost thoughts to Burger and say to Burger, "Under your instructions and orders we have got to fight it out, and you or I go out the window on the 14th floor"?

Did he lack courage?

Furthermore, I think that is very enlightening, if the Commission please, as to why he could not rush right down here to the F.B.I., as well as the other reason he has previously given, that he had been under such a great mental strain and had suffered such hardships for several months preceding his arrival over here, that when he came down here he said, "Gentlemen, let me tell this. It is a long story. Let me tell it in my own way from the beginning to the end."

Now, let us see what happened on the landing that discloses intentions, that points unerringly to what a man must be thinking even though he did not express it in words.

We recall the instructions of the captain. It is not necessary for me to read them. They are found on page 2668 of the record. They were that if any patrol or guard or sentry or other person was met on the beach on landing-- and he picked out two of the biggest, strongest sailors--

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they were to overpower that sentry or guard and bring him back to the submarine.

Let us see what the picture is. They land. They get the boxes on the beach. Dasch goes back to the sailors and they are waiting to get the clothes in the duffel bags so the sailors can take the duffel bags back to the submarine. But here comes a Coast Guardsman with a flashlight, down the beach. All Dasch had to do was to wait with the other two sailors until the Coast Guardsman came up, and turn him over to the two sailors and they would take him back to the submarine, and nobody would know that the landing was effectuated, from that source, at least.

Let us see about that. He walked rapidly toward the Coast Guardsman and engaged him in a conversation. He told the two sailors to go back to the submarine, that he would handle him. While he is talking to the Coast Guardsman, Burger comes up with the duffel bag, dragging it along, and he goes right up to the Coast Guardsman--I think the Coast Guardsman described it as within a foot, before he even knew he was there. Again, it is very simple to overpower him; it is very easy to overpower him. What does Dasch do? He tells Burger to go back with the other two, and he will handle the situation; and he talks to them. I am not going to read in detail what was said there. You remember it.

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Among other things--now, listen to this--he decided to give him some money, and they used the flashlight to count it. I think Dasch gave him nearly \$300, or said he did. The coast guardsman, I think, said it was a lesser sum. At any rate, it was some substantial sum.

But before the coast guardsman left, Dasch said to him several times, so the coast guardsman said, "Look at me. Look at me well," and he took his cap off and showed him the gray in his hair. There, with the flashlight, he said, "Look at me, and look at me well. You will hear from me in Washington."

The coast guardsman said he thought Dasch said, "You will hear from me or see me at Amagansett."

But mark you, now, Burger said that when he returned to the other two, as related by one of them on the stand, Burger said to the two, "Dasch met a coast guardsman, and he said he would see him in Washington," or something to that effect, and the man to whom Burger made the statement said it caused him to distrust Dasch. Dasch told that same story to the F. B. I. here, so it must be true. Burger tells it. He told Burger the same story immediately following the incident, and he admonished Burger to remember the boy's name, because he said, "It will come up again in Washington." Let us see about that. What did Burger say about that incident? On page 2669 of the record, here is Burger on the stand, talking about the ease with which they could have overpowered this chap, and that was, mind you, just when Dasch and Burger were there.

"Would there have been any difficulty in over-powering that man?"

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"No."

"And it would have been an easy matter to carry out the instructions of the captain of the submarine?"

"Yes."

"What did Dasch tell you to do?"

"I should go back to the other two boys and keep them there."

"By 'the other two boys' you mean the other two of this group of four?"

"Yes, Henry and Dick."

"And I believe that you later learned, in connection with the sailor, that Dasch had instructed the two sailors to go back to the submarine?"

"He did."

Here is Burger's explanation.

"When George told you to go back to the other boys and keep them there, or whatever he said, what did you do to carry that out?"

Page 2670. The answer is clear.

"As I recall it, I came back--I had the sea bag with me--I came back to the two boys and told them, first of all, 'Down.' I believe, as much as I remember, I told them, 'Down,' to crouch down--and I explained to them that there was an American sailor, or something, because I saw that white cap and that everything would be O.K., that George takes care of him, that he gave him some money, and that's all, I think."

Then I shall skip some interrogation there.

"I believe you explained to them that that was

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George's order, that they should remain there?"

"Yes. In fact, we stayed there--we stayed at the same place until George came back, and then after George came back we went up the bank. We did not leave before George came back."

Let us see what followed after they started to leave that point and went down toward the road. This is on page 2672.

"After we had started out from our--from this place where we sat down and we waited for light, for morning, Dasch and I walked together on the concrete road, and he told me I should listen very carefully and remember the name Frank Collins as the name of the Coast Guard boy, because there would be a day when I had to remember that name and when he would use his name."

That is Dasch talking to Burger.

"Did he tell you where he would use the name?"

"He told me that in connection with Washington."

Is there anybody on this Commission who thinks that Dasch is so versatile and such a fast thinker and such a quick thinker that he could land on the coast, with the instructions of the boat captain still ringing in his ears to overpower anybody if they found anybody on the beach, and that he could become so frightened over one unarmed sentry that he would change his mind about the whole thing and decide not to go on with the plan and to expose it and would do the things that he did from then on that are consistent with an exposure plan long previously thought of? I do not believe it is possible, if the Commission please. Why, everything he did--everything--

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is consistent with the prearranged, thought-out plan on his part to come back to the United States and expose the whole thing and not carry it out. Not a thing that he did is consistent with the desire on his part to go on with the plan--not a thing.

At page 2447 of the record, let us see what the other two members of the group were thinking about at the same time. This is the witness Heinck testifying.

"Did you and Quintas talk about Dasch running out on you?"

"We did."

"You were afraid Dasch would give you up, were you not?"

"I was not afraid."

"You thought he would?"

"I had an idea that he would do so. I told the F. B. I., 'I had a funny dream last night. I saw Dasch standing in the F. B. I. office and he told about everything.'"

That is on page 2447.

Will the Commission just suggest why a man would have such a dream if he had not previously thought about it considerably? The evidence shows that they got the idea first in the school over in Germany when, every time anything came up, Dasch would say, if it was up to him to instruct his group, "Well, wait until we get to America. Wait until we get to America." That was one of the things that caused them to doubt him. Then, there was the fact that he did not study. He took no interest in other things. That caused them to

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doubt him.

They went down and looked at some murals in New York, in Radio City. I think it was Burger who talked about that, as it appears on page 2673 of the record. I am starting to read in the middle of an answer of Burger's:

"After that we started walking through this Radio City, and he explained to me--showed me different things and explained to me these mural paintings, pictures of the oppressed people and slave drivers, and all that, and the substance of our talk was that I knew exactly--I told him that I knew exactly what he was up to, because he hinted that he had a special plan which he had as a mission, more or less--had to carry out--and finally--I knew what was going on."

That is Burger talking. Is it possible that a man for the first time changes his mind on the beach and then everything he does thereafter is consistent with the prearranged plan to do it? That he could change his mind on the beach about so many things and change his mind when they got to the first station? Don't you remember how Dasch debated on whether he would call the F. B. I. from the restaurant across the street while they waited for two or three hours for the first morning train at the first station?

Let us pursue this a little further. Here is Burger talking, at page 2674:

"I found out first that he had nothing to do with national socialism whatever--nothing at all--secondly, that he hated the regime over there, and, as I told you,

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that he had a mission which he had to carry out over here, and this mission consisted in fighting the present regime in Germany.

"He did not tell me any definite plan--in fact, he did not tell me any definite plan as long as I was together with him, because I do not think he had any definite plan."

Why, he had so many other things to think about that he could not plan what he was going to do if and provided he got to the United States. He had too many things to watch and guard against and protect himself against in getting to the United States, first.

I then said, "I find on page 58 of your statement, which is in evidence, this paragraph"--and I shall skip a little of my question, which appears on page 267¹/₄. Here is what Burger said in his statement to the F. B. I.:

"This convinced me that George was against the present regime, as I was, and that he did not wish to carry out the orders we had received. Then he told me he would have to put me through different tests before he explained what he intended to do. At this moment, I told him, right to his face, that I knew exactly what he wanted to do."

The witness said, "Yes."

"Question. 'His answer was that if I knew that, I would have to kill him.'"

"Answer. That is right."

"Question. 'At that I smiled and told him that I was quite sure that our intentions were very

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similar. After this the restaurant became crowded and we left."

"Answer. That's right, sir."

Those are statements Dasch made voluntarily to the F. B. I. In connection with the statements, I want you to remember just this. Dasch did not make one statement to the F. B. I. the first day and change it the second or the third day or any other time, and neither did Burger. The statements that Dasch made over that period of five or six days have not been changed one iota to this day, and the F. B. I. has not called attention to one mistake or one erroneous statement that he made; in fact, it was testified from the stand that insofar as the F. B. I. had checked his statements, they were accurate. The same is true with respect to Burger's statement.

On page 2675 Burger says:

"Well, I recall very distinctly that he told me right in the beginning that we would have to fight it out if I meant the same--if I do not have the same opinion he has."

Then, there is more of that same kind of testimony.

Let us see how the sailors happened to return. The sailors went back before they got the duffel bag, as a matter of fact. On page 2686, here is a question by the Commission:

"When did the sailors go back to the submarine?"

"When I came back--when I wanted to carry back or bring back the sea bag to the rubber boat, and I saw George talking to the coast guardaman, I didn't see the boat any more, so the boat must have left with the two sailors, shortly after George came together with

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the coast guardsman."

"Who gave them orders to go back to the submarine?"

"Well, I didn't hear George giving the orders, but he told me that he had given the orders to those two sailors."

"Before he saw the coast guardsman?"

"No, when he saw the coast guardsman or after he saw the coast guardsman."

All I have to say is that if Dasch can think that fast and change his mind that quickly and then ever thereafter consistently carry out that plan without having had the plan before--well, he is just a greater actor than I believe it possible for him to be. I believe the Commission will come to that same conclusion.

Something has been said about the cards. Well, I do not know. Of course, I do not know whether there are any card players around here or not. But if there are, I think they will all agree that one good way to get your mind completely off your business worries or whatever you are doing mentally is to get into a good, interesting game of cards. Or there is another occupation: you can go out and play golf. If you are playing golf, either you get your mind on the golf game, or you do not play golf. You may dub the ball many times, but you get your mind off the other things.

What was the mental condition of Dasch after all he had gone through? He said he had gone through such a mental strain and physical hardship, after he came down, after he rested up there in New York, so naturally there cannot be any doubt about what his mental condition was before that rest.

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I read from page 2679:

"Did Dasch say anything to you about his playing cards and getting his mind off of everything?"

"Yes, he did."

This is Burger's testimony.

"And that when he got his mind on the cards and off of everything else for a couple of days his mind cleared up and he was then ready to talk with the F. B. I.?"

"Yes, that's right."

"When he came back and when I saw him, I told him that I did not think it was the right thing for him to disappear for such a length of time, especially when he told me he was playing pinochle--that it was not exactly the right time to play pinochle at that time--and he told me that I should be glad that he did play pinochle, because he is now a different man and he is more or less his old self again. That's the way he stated it."

Another answer is:

"Well, after he came back he was quiet and, as he told me, was ready to sleep, and I noticed that his hands did not tremble any more, as they did before, and that he was easier in his way of speaking, too."

"And he did come on down to Washington on Thursday?"

"Yes, he did."

"Now, did you wait in the hotel there in New York to hear from Dasch or the F. B. I.?"

"I did, sir."

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"I believe you got the letter which he left with the clerk?"

"Yes, I did."

"You did not get the other two letters he wrote you, however?"

"I did not."

"But they have been introduced here in evidence?"

"Yes."

"Now, when the F. B. I. came into your room were you surprised?"

"No, I was not surprised."

"Was your door locked?"

"No--in fact, I told the agents of the F. B. I. that I was expecting them."

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Was Burger acting? The letter has been offered in evidence here, if the Commission please. Let us get the letter. It is on page 475 of the record. Let us see what he said in that letter. It was written on the Hotel Governor Clinton stationery, dated June 18, 1942:

"Dear Pete:

"Sorry for not have been able to see you before I left. I came to the realization to go to Washington and finish that which we have started so far.

"I'm leaving you, believing that you take good care of yourself and also of the other boys. You may rest assured, that I shall try to straighten everything out to the very best possibility. My bag and clothes I'll put into your room. Your hotel bill is paid by me, including this day. If anything extraordinary should happen, I'll get in touch with you directly.

"Until later,

"I'm your sincere friend,

"George."

Now, the F.B.I. took possession of that letter when they apprehended Burger, and that is the letter that the other two boys read when they came up to see Burger in his room, and that is the time that Burger said he had a feeling--he would not say he was afraid, but he had an uncertain feeling, and he explained it on the stand, that he got out of the room and took the boys out so that if they had any desire of carrying out any intentions they would not execute it at that time.

What did Burger say about whether he was in any conspiracy? I think the Commission asked him something about a conspiracy.

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These are questions by the President of the Commission, appearing on page 2695 of the record:

"You stated that you and the defendant Dasch had a conspiracy against Germany?

"Yes.

"When did you and Dasch enter into this conspiracy?

"Well, sir, it was--I tried to answer the question which was mentioned by the prosecution just before the recess. The talk was about conspiracy. I was trying to explain, and I want to mention I have no legal mind whatever--I am just as I said in my way of being a soldier--that if there is any conspiracy, why, the conspiracy we made was not against the United States. So, on the other hand, it must have been against Germany."

That is Burger's answer. I do not think there is anybody on the Commission who doubts but what he told the truth when he answered that. They did not have an explicit out-and-out understanding until they got into New York, but they did have that undercurrent understanding back in Germany, and that explains why Burger, when Dasch said, with regard to the one Coast Guardsman, "Go back to the other two. I will handle this," he went right back.

Now, let us look at the situation. Suppose the other three had wanted to carry out Kappe's instructions. There are three who were satisfied in their own minds that Dasch was disloyal to the cause for which they came over when he did not take the Coast Guardsman into custody and send him out to the submarine--three against one on a lonely beach in the fog.

Could they have disposed of him right then and there,

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except for Burger's cooperation with Dasch and the uncertainty of the other two?

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There was not any doubt in Burger's mind at that time, and when he went back to the other two, if he had said, "We are with the wrong leader," they could have done two things. They could have gone down there and overpowered both of them, or they could have waited until the Coast Guardsman left and got rid of Dasch and have been on their own. But Burger at that time was of the same mind as Dasch. Each was satisfied that the other was of the same mind, and they did not have any desire to do away with each other. The other boys did not take the initiative to do it.

Now, let us see what Quirin said when he was on the stand. This appears at page 2481 of the record:

"Q You said that one of your group said, after landing, 'I think the job is over now.'

"A It was Henry. After the meeting we had with George and Pete at Grant's Tomb George had told him that we were not going to get the boxes, and after Henry and I had walked away he told me that the job was over now, since we didn't have to go for the boxes, and it was understood that we would have to leave them there."

Now, why did Dasch say they would not get the boxes if he had any intention of carrying the thing out? He thought the money he had given the Guardsman had effectively sealed the Guardsman's lips. You cannot read his own statement to the F.B.I. without getting that inevitable conclusion all along the line. In fact, it appears that Dasch's conscience was worrying him, because he had been compelled to give that

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innocent fellow that money, and because he then thought he had accepted it as a bribe and that it had sealed his lips, and when they finally told Dasch that he had not accepted the bribe, he expressed pleasure to the F.B.I. You will find that in the statement of Dasch.

I referred to the letter that was in Burger's room when Burger was apprehended. There are some other letters, if the Commission please, in connection with this case.

From time immemorial letters written from one person to a friend or a loved one are considered the very finest and best way of ascertaining what is really in the person's mind. In other words, when I write to a friend about something, I give him the lowdown on the subject. I do not give him what I might give to a stranger or to an enemy. I do not mislead them. When I write to my friends I usually express my innermost thoughts.

So, naturally, when Dasch wrote a letter to Burger after he came to Washington the F.B.I. apprehended it in New York, and Burger never got it. Well, now, let us see what he said. It is contained on page 1505 of the record. If Dasch in that letter had indicated something different from what he has claimed from the beginning of this, of course the prosecution would have put it right in evidence. What did he say on June 19, 1942?

"My dear Friend Pete:

"Got savely into town last night and contacted the responsibly parties. At present I'm waiting to be brought over to the right man by one of his agent.

"I had a good night rest, feel fine for phisical

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as well as mentally and believe that I will accomplish the part of our participation. It will take lots of time and talking but please don't worry, have faith and courage. I try hard to do the right thing. In the meantime take good care of yourself and of the boys. Please don't go all over town. Keep silent to everybody. I promise you to keep you posted on the future developments.

"Before I left you, I begged the mgr. of your hotel, Mr. Weil, to take good care of you, for you are a Jewish refugee, so please act accordingly.

"Best regards and wishes

"Geo. J. Dasch."

This is the P.S.: "I'll forward to you my address where you reach me, via mail or phone, soon."

That letter was intercepted by the F.B.I. in New York. I do not have any criticism to offer about that, even though he was only in protective custody, because they were trying to find out then, and properly so, whether the thoughts which he would express in the intimacy of a letter to Pete would be different than the thoughts that he was expressing in these statements during the four or five days of interrogations made down here in the F.B.I. office, and it corroborates him in every respect.

There is another letter immediately following this, on page 1506 of the record, which was written several days later, I think. It is on the stationery of the Mayflower Hotel, Washington, D. C., June 22, 1942:

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"My dear Pete:

"I bet you begin wondering why I didn't write to you sooner.

"In my last letter to you from here, I stated that I had found the right way and right persons to tell our story. Since that time things began to happen. I've been working like hell from daybreak until dawn. What I have this far accomplished is too much to describe here. I can only tell you, that everything is working out alright. Have faith and patience. You will hear or see me in the near future. Please stick to your role and keep the other boys contented and please don't loose their sights. Also don't tell them, that I've been here, tell them that you have heard from me from Pittsburgh.

"I also beg you to destroy this letter after having read it, for it would be awful if Henry & Dick would ever read this letter.

"So please Pete take good care of yourself, have fullest confidence that I shall try to straighten everything out to the best of every one concerned. Untill you hear from me again, accept my best regards & wishes.

"Your friend,

"George I. Dasch."

Endorsed on the back of the envelope was this statement:

"Dasch attempted to mail 6-22-42-intercepted and held-turned over to Duane L. Traynor 6-25-42. F.G.J.

"Placed in exhibit envelope of Dasch at Bureau just prior to trial on 7/7/42.

"F. G. J."

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There is a memorandum that was in one of his briefcases over there, which appears at page 1494 of the record. It starts, I think, on the bottom of page 1493. Before Dasch left New York and immediately following the time when he took the money out of the suitcase and put it in the briefcase, he wrote on an envelope a memorandum and put it in the briefcase, with his money, and I just want to read that memorandum in connection with these two letters.

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On the stationery of the Hotel Governor Clinton, New York City:

"June the 18th, 1942. Content \$82,350"--that is the amount of money he brought with him in the briefcase when he came down here from Washington--"Money from German Gov. for their purpose, but to be used to fight them Nazis. George J. Dasch, alias George J. Davis, alias Franz Posterious."

In answer to questions, he stated that he had made that notation on there just in case somebody got hold of the money before he had come down here to the F.B.I., and made that explanation as to what the money represented and what the money was.

Now, let us see what he said to Colonel Kramer. Colonel Kramer, by the way, I think was a member of the General Staff. When Dasch wanted to call somebody up after he got down to Washington he was undecided at that time as to the proper ones to get in touch with. He knew of the F.B.I. He thought maybe the Army was the proper one, and somebody had told him that the Attorney General would be the proper one, but, anyhow, he called up Government Information the morning after he arrived

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and they recommended that he contact Colonel Kramer.

When he called Colonel Kramer's office, Colonel Kramer was out, and he left word for Colonel Kramer to call him back. He then called the F.B.I. and he arranged with Mr. Traynor of the F.B.I. to go to the F.B.I. office, and Traynor said he would send somebody of his group to escort him over.

After that arrangement Colonel Kramer called him back. Let us see what Colonel Kramer says about it, because Colonel Kramer wrote out a brief statement and signed it and swore to it, and the prosecution agreed that it could be introduced in lieu of his testimony, because he had been ordered to another station:

"July 11, 1942. Statement by Col. H. F. Kramer, G.S.C., reference to a telephone conversation with one George John Davis.

"On or about June 19, 1942, at about 9:00 A.M., George John Davis called my secretary and left word to call him at room 351, Mayflower Hotel. I called about 10:00 A.M., asked for room 351. A man responding to the name George John Davis answered.

"I told him who I was and he stated that he had some very important information which he desired to surrender to someone in authority. On questioning by me he further stated he had landed in charge of a group from Germany. I then told him to stay where he was and I would be right over. He then stated that he had already contacted the F.B.I. and they told him not to see anyone and stay where he was. I then told him not to worry, that I would not bother him but would contact

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the F.B.I. regarding him. The man seemed sincere and anxious to turn over what he had and slightly nervous.

"H. F. Kramer

"Colonel, G. S. C.

"Sworn and subscribed to beforeme this 11th day of July, 1942, at Washington, D. C.

"John M. Weir

"Colonel, J. A. G. D."

And he is right here in the room.

Now, it seems to me, if the Commission please, that with all those happenings and those evidences of records and those letters and memoranda and everything else, there should not be any doubt in our minds that he had the intention, when he landed here, to do what he did, and that he continued to have the intention to do what he did after he landed.

Again, they say, Why didn't he come down sooner? Well, he took six days, I believe it was, to rearrange his mind and figure out how and what he would do. You know, gentlemen of the Commission, it seems like he was a little bit precipitate as it was, because what do we find? We find, in spite of what he did and in spite of the length of time that he thought about it and waited to get his mind cleared up, that he is on trial here with all the rest of the defendants, after all that happened, after being in protective custody for five or six days and laying the solution of this whole thing right in the lap of the F.B.I.

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fls
4:30 p.m.

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Let us see what was his mental condition after the landing and his intentions after the landing.

I have already referred to the talk he had with Burger on the way to that first station, in which he told Burger to remember the name of the Coast Guard, because he would need to remember that when he got to Washington. I shall not go into that again, but all I have to say to this Commission is to leave this thought again, that if Burger had not been with him, Burger and the other two could easily have disposed of Dasch. Dasch did not know for sure then that Burger was with him. So he took that chance. He took a chance when he confided that far in Burger then, that he might thereby forfeit his own life; and I say that a man who is not a courageous man would not do that.

He told Traynor, when he first reported to Traynor down here:

"I debated. I sat there at that station and looked at the lighted restaurant across the street and debated in the early morning hours whether I should go over and telephone to the F.B.I. then, and I decided it would not do."

He was not sure about Burger. He thought he was with him, but he could have been mistaken, and he was afraid that the other two boys would learn of the call if he made it at that out-of-the-way place. So he decided not to.

But when he got to New York, and after he had the confidential talk with Burger, he called the F.B.I. office on Sunday night.

The first night that Traynor spent with him over at

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the hotel he showed Agent Traynor the briefcase and the \$82,500 that was in the briefcase.

Does that sound like he had any intention of being a chiseler? Does that sound like he had any intention of hiding the money, coming in and taking any kind of a punishment at all?

What did Traynor say on the witness stand? Traynor said that Dasch thought he was going to use that money to broadcast back to Germany propaganda which would cause the common people of Germany to turn against Germany. That is what he intended to use the money for; and he expressed pleasure that he was able to get that much money in order to carry out that purpose.

Burger was instructed to look after the other two in New York and wait until he heard from Dasch.

Traynor also testified on the witness stand that he not only believed in Dasch when Dasch talked to him those four or five days, but that he told Dasch he believed him. And then, after the statement was all reduced to writing and signed, what did Traynor say caused any doubt in his mind?

Everything he checked up he found to be accurate in the statement. He said he formulated a doubt. At least one of the reasons he gave was because Dasch did not come down sooner. Traynor said, "If he had come right down and told us all about this thing, we might have apprehended the submarine down on the Florida coast."

Let us see. The Florida coast, as I recall it, is between 500 and 700 miles long, along the Atlantic Ocean. Just how anybody is going down there and apprehend a submarine that is going to discharge a few passengers some night

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on a coast that big, I do not know. I do not think that is a good excuse at all for not having confidence in Dasch.

Let me follow that. And I do not say this in a critical attitude of the F.B.I. I am just merely meeting the statement that they have made.

Let us see what happened. On Saturday morning following the landing on Long Island, there were turned over to the F.B.I. office in New York City all of the clothing, all of the explosives, and all of the other things that were displayed here in this room to this Commission, with the information that somebody had effectuated a landing between Friday night and Saturday morning, and must have brought all that with them.

On Sunday night--now, think of this--on Sunday night Dasch called the F.B.I. office and told them that he just came into this country from Germany, "two days, now," I believe was the expression. "Two days, now," to the German mind is literally two days, but to the man who received the call it meant "two days ago," which makes a difference of one day.

What happened? They did not even connect that man at all with the fact that two days ago a group landed on the Long Island shore and had German uniforms and everything. And still, if the Commission please, they say, "We decided we did not believe Dasch after we assured him we believed him, after we told him we believed him after we had kept him in protective custody for his own protection to save him against what might happen from these other people if they discovered he had disclosed this information." They say, "Well, we are not so sure. He didn't come down here quite soon enough." I say to the Commission that I think it is a shame. I think it is a shame that the F.B.I. did not take the witness stand

Q and say to this Commission candidly, "We think, with respect to Dasch, that he is in a different category altogether. He came before us voluntarily. He spilled this whole thing in our lap, and we think that you should take that into consideration in this trial."

But not one word, except to conjure up reasons why they can tell this Commission, "We do not have confidence in him."

And then The Judge Advocate General gets up and says to this Commission, "You have heard all the evidence. Find them all guilty, and we want death for all eight of them."

What did Dasch say? The Attorney General said to him-- and I am reading from page 2563:

"Q You are loyal to everybody, aren't you?"

This is on cross-examination by the Attorney General:

"Q You are loyal to everybody, aren't you?"

That followed some other question.

"A I am loyal to all good, decent, honest, law-abiding citizens, regardless of whether they are in Germany or America or France."

Then he went further:

"Q Were you a slave in Germany?"

"A A slave?"

"Q Yes."

"A I was physically a free man. I had a very good job and good money."

"Q Were you a free man mentally?"

"A I dreaded becoming a slave, and that is the reason I didn't want to become a slave like the other poor people, and that is why I had to go--not to become a slave."

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What did he say was happening to the people in Germany-- reading from page 2519?

"A The conditions I found there were the condition of people who were slaves. They were not free people. They not only were slaves as regard to their physical aspect, but also to their mental. They didn't have no right even to think. Their freedom of mind was taken away from them and is being taken away from them today."

That was the condition that he found back there. Is it any wonder that he wanted to get away from there? Is it any wonder that he wanted to fight that kind of a regime?

I repeat, now, gentlemen of the Commission: You just figure out, if you can, if you had been in his position and you honestly wanted to come back here, as he says he wanted to come, and fight that thing in Germany, get to a place where you could fight it, what would you have done or what could you have done that would have improved on what he did?

If you can just figure that out, and then can follow it up and say, "I do not believe from the record that we have before us that he ever had such a plan"--well, then, gentlemen of the Commission, of course you can find him guilty. But I cannot think that you can come to any such conclusion. I do not believe this record is subject to that interpretation.

Further, I asked Dasch when he was on the witness stand, if, while he was a monitor listening to all the broadcasts that had to do with the welfare of the people of Germany, he listened to President Roosevelt's speeches, and he said he listened to all of them.

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I take it that this Commission can take judicial notice of those speeches. Our Commander-in-Chief has, not once but several times, over the radio appealed to the liberty-loving people of the entire world, to do what? To rise up and fight the very thing that we are in this war to fight right now.

And here is a man who came across, as he says, to fight it, and he is corroborated not once but, as I have related, he is corroborated many times; and that indicates inevitably that that was his mental condition when he came over here, and he certainly carried it out after he got here.

What are we going to do in a case like that? Is there one of these charges against Dasch that can stand in the face of an intention on his part, before he left Germany and ever since, to do what he has done in this case? Why, I submit, gentlemen of the Commission, that every one of these charges must fail, if that be true, and that there is but one just and fair finding that you can bring in, and that is: "We find the defendant Dasch not guilty of every charge and every specification."

(Informal discussion took place which the reporter was directed not to record; after which the following occurred:)

The President. The Commission will adjourn until 9:30 tomorrow morning.

(Whereupon, at 4:45 o'clock p. m., the Commission adjourned until tomorrow, Saturday, August 1, 1942, at 9:30 o'clock a. m.)

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